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IN THE MATTER OF: :

CONSENT MARKETS, TARIFFS AND RATES - ELECTRIC :

CONSENT MARKETS, TARIFFS AND RATES - GAS :

CONSENT ENERGY PROJECTS - HYDRO :

CONSENT ENERGY PROJECTS - CERTIFICATES :

DISCUSSION ITEMS :

STRICKEN ITEMS :

Hearing Room 2 C

Federal Energy Regulatory
Commission

888 First Street, N.E.

Washington, D.C.

Wednesday, April 24, 2008

10:30 a.m.

1 APPEARANCES:

2 COMMISSIONERS PRESENT:

3 CHAIRMAN PAT WOOD, III, Presiding

4 COMMISSIONER LINDA KEY BREATHITT

5 COMMISSIONER NORA MEAD BROWNELL

6 COMMISSIONER WILLIAM L. MASSEY

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8 SECRETARY MAGALIE ROMAN SALAS

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12 ALSO PRESENT:

13 DAVID L. HOFFMAN, Court Reporter

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1 PROCEEDINGS

2 (10:30 a.m.)

3 CHAIRMAN WOOD: (Presiding) Good morning. This
4 open meeting of the Federal Energy Regulatory Commission
5 will come to order to consider matters which have been duly
6 posted in accordance with the Government in the Sunshine Act
7 for this time and place.

8 Please join me in the pledge to the flag.

9 (Pledge of Allegiance recited.)

10 CHAIRMAN WOOD: Madam Secretary?

11 SECRETARY SALAS: Good morning, Mr. Chairman.
12 Good morning, Commissioners. Before we proceed with the
13 consent agenda for this morning, we need a separate vote to
14 waive the provisions of the Government in the Sunshine Act 5
15 USC 552(b)(e)(1) to permit the following docket number and
16 companies to be added to the order to be considered today in
17 E-4.

18 Docket Number EC-99-101-006, Northern States
19 Power Company, Minnesota, and New Century Energies, Inc.
20 And Commissioner Breathitt votes first today.

21 COMMISSIONER BREATHITT: Aye.

22 COMMISSIONER BROWNELL: Aye.

23 COMMISSIONER MASSEY: Aye.

24 CHAIRMAN WOOD: Aye.

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SECRETARY SALAS: The consent agenda for this

1 morning is as follows:

2 Electric items E-8, E-10, E-11 through E-14, E-
3 16, E-17, E-18, E-21, E-22, E-24, E-26 through E-28, E-29,
4 E-30, E-38, E-40, E-41, E-43 and E-45.

5 Gas: G-1 through G-8, G-13, G-15 through G-18,
6 G-20 through G-24, G-26, G-27 and G-29 through G-32.

7 Hydro: H-1 through H-3.

8 Certificates: C-2 and C-4 through C-7.

9 Miscellaneous: M-1.

10 The specific votes for these items are, on E-21,
11 Commissioner Brownell concurring with a separate statement,
12 and Commissioner Breathitt votes first.

13 COMMISSIONER BREATHITT: Aye.

14 COMMISSIONER BROWNELL: Aye with concurrences on
15 both E-8 and E-21.

16 COMMISSIONER MASSEY: Aye.

17 CHAIRMAN WOOD: Aye. Before we hop into the
18 items, I'd like to make a presentation to one of our
19 departing stars, that is to Heidi Marie Sanford of the
20 Commission's Office of External Affairs. Heidi is retiring
21 on May 3rd, and it's an appropriate time to honor her for 41
22 years and nine months of federal service, 18 of them as a
23 colleague here at the FERC.

24 For nearly two decades, she's been the go-to

1 person for information and publications that no one even had

1 ever heard of or knew what they were. She served the
2 Commission in the dual role as a public information officer
3 and as a Freedom of Information Act specialist.

4 Over these past several years, she's had
5 responsibility for FOIA, and that's been an exponentially
6 increasing responsibility, certainly as a result of the
7 energy crisis in California and the September 11th attacks
8 and the collapse of Enron. The requests for information
9 from this agency for public disclosure purposes has been
10 tremendous, and Heidi has met this challenge with
11 determination and skill and the highest degree of
12 professional commitment.

13 I got to know her myself when she sent a friendly
14 e-mail making me feel welcome here. I really appreciated
15 the personal touch that she adds to her job here. But it's
16 nice to see a person that combines a solid record of public
17 service with a delightful and charming personality. We will
18 miss her very much. And in honor of her many years of
19 service and of quality service, we want to give her today
20 the Exemplar of Public Service Award.

21 (Applause.)

22 SECRETARY SALAS: The first item on the
23 discussion agenda this morning is E-1, Standardization of
24 Generator Interconnection Agreements and Procedures. This

1 is a presentation by Michael Henry, James Ballard, Roland

1 Wentworth and Patrick Rooney.

2 MR. HENRY: Good morning, Chairman and
3 Commissioners. I'm Michael Henry. With me today are team
4 members Jim Ballard, Roland Wentworth and Patrick Rooney.
5 E-1 is a notice of proposed rulemaking or NOPR on
6 standardized generator interconnection agreements and
7 procedures that will be made a part of open access
8 transmission tariffs. These would remove roadblocks to
9 information infrastructure, permit open access transmission
10 and facilitate choices for customers to simplify and
11 standardize the processes for competitive entry.

12 This NOPR builds on the work that started with
13 the advance notice of proposed rulemaking and continued with
14 the efforts of industry participants who through a
15 collaborative process negotiated and crafted many provisions
16 of the consensus agreements and procedures filed by the
17 Commission in January.

18 These documents form the basis for the
19 interconnection agreement and procedures in this NOPR. The
20 NOPR explains that the Commission's current pricing policy
21 was used in negotiating the consensus interconnection
22 agreement and procedures. The NOPR seeks comment on whether
23 the current generation interconnection and transmission
24 pricing should be retained. It also requires those

1 commentors submitting alternative pricing methods to

1 identify and explain to what extent the NOPR interconnection
2 agreement and procedures must be modified and how these
3 proposals will ensure that rates are designed on a
4 consistent and comparable basis.

5 The NOPR concludes that a standard
6 interconnection agreement and set of procedures will resolve
7 recurring interconnection disputes and foster increased
8 generation development and reliability.

9 The NOPR invites public comment which will be due
10 45 days after the NOPR's publication in the Federal
11 Register.

12 Thank you. This concludes our presentation.

13 CHAIRMAN WOOD: Any thoughts?

14 COMMISSIONER BROWNELL: Just a couple of
15 thoughts. While we asked for comments on some of the
16 pricing issues, the way it's drafted seems to focus on LMP.
17 I would just encourage commentators to really look at pricing
18 comments on the whole SMD. I think it's important we have
19 another paper out there that we make sure that we're getting
20 the larger picture.

21 The other thing I'd love you to describe, because
22 I was really pleased to see it, is there's some special
23 provisions in here for smaller projects that I think will
24 make it easier to bring renewables on line more quickly,

1 which of course this Commission has spoken very favorably

1 of. Do you want to describe some of the ways in which that
2 will occur?

3 MR. ROONEY: Yes, I'll try. We're proposing
4 accelerated procedures for small generators and studies
5 limited in scope to the immediate vicinity of small
6 generators, the interconnection itself, and we ask that the
7 transmission providers use existing studies to the extent
8 possible at no cost to the small generators.

9 COMMISSIONER BROWNELL: Thank you.

10 COMMISSIONER MASSEY: I would like to commend our
11 Staff for their hard work on this. The documents associated
12 with this proposed rule are extensive, and I can see that a
13 lot of work has gone into it on Staff's part and also for
14 the industry as a whole.

15 There have been extensive negotiations over the
16 last few months, and I would like for someone to respond to
17 this question. To what extent have the negotiations been
18 successful in narrowing the scope of differences among
19 transmission providers and generators? In other words, how
20 close are we to a deal on all issues? Did they reach
21 agreement on most of the issues, the vast majority of
22 issues? How would you characterize it?

23 MR. ROONEY: I'd say that they reached consensus
24 on a lot of issues. I won't say the majority of the issues.

1 I think we pointed out in the order, there's about eight or

1 nine different issues where the generators and the
2 transmission providers had differences and that we had to
3 make a decision as to which way to go.

4 But in general, there was a lot of consensus that
5 was achieved as a result of the process that we went
6 through.

7 COMMISSIONER MASSEY: Is it your opinion that
8 that process was useful in getting where we want to go
9 ultimately on this rule?

10 MR. ROONEY: In this particular rule, yes, it was
11 useful. I think the narrower the scope of what we're
12 dealing with sometimes makes it easier as far as that type
13 of process.

14 COMMISSIONER MASSEY: I know there were some who
15 advocated that the Commission exercise its jurisdiction,
16 make jurisdictional calls here that were very aggressive in
17 terms of the reach of our jurisdiction. Others argued that
18 we ought to be fairly conservative in the approach that we
19 would take. Where do we end up in this rule? What do we
20 propose in terms of what generators would be subject to
21 these procedures?

22 MR. ROONEY: The small generators, for example.

23 COMMISSIONER MASSEY: Just in terms of where the
24 generator is located on the grid. For example, is the

1 generator selling at wholesale or retail, those kinds of

1 questions.

2 MR. HENRY: I can probably speak to that,
3 Commissioner. In the order we propose that the NOPR INIP
4 will apply only when the generator interconnects to the
5 transmission providers, the transmission system or makes
6 wholesale sales in interstate commerce at either the
7 transmission or the distribution voltage level.

8 COMMISSIONER MASSEY: So it seems to me that
9 those are areas where this agency clearly has jurisdiction
10 over interconnection policy. That seems to me to be a
11 fairly reasonable conclusion that we propose here.

12 We don't propose that these procedures apply to
13 all generators regardless of where they're located and
14 regardless of the purpose. A generator that interconnects
15 at the distribution level and plans to sell into the retail
16 market solely would not be covered by these procedures. Is
17 that correct?

18 MR. ROONEY: That's correct.

19 COMMISSIONER MASSEY: That would be subject to
20 state jurisdiction. Okay.

21 COMMISSIONER BREATHITT: This NOPR proposes the
22 adoption of two separate documents. One is the common set
23 of procedures for the generation interconnection itself.
24 The second is the generic standardized interconnection

1 agreement. Is that right?

1 Many of the proposals are the result of the
2 consensus-building process that Staff undertook with a lot
3 of people sitting in this room today. The hard work of all
4 who participated has paid dividends, and many of the
5 proposals in the NOPR reflects the consensus view of the
6 industry.

7 Mr. Chairman, when we started this, I had never
8 been a part of our Commission employing an ANOPR process,
9 and it worked well. That is something that was exported
10 from your experience in Texas here, and I think maybe we'd
11 be able to use it again, because I think it did work well.
12 It was a lot of hard work at the beginning, but we are
13 producing today a rulemaking that has made a lot of cuts
14 that there is consensus on. So I applaud the Staff and
15 others who worked hard on this effort.

16 The two areas that I would like to note have
17 somewhat been talked about, and one is the pricing. The
18 other is the treatment for small generators.

19 We had initially envisioned having the
20 interconnection pricing done on a separate track, and indeed
21 even a separate NOPR itself. It's my understanding that
22 we're not going to have a separate NOPR on pricing, that
23 we've included some pricing elements in this document. Is
24 that correct?

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MR. LARCAMP: That's correct.

1 COMMISSIONER BREATHITT: The reason I understand
2 is that parties needed some pricing method to inform their
3 comments and their decisions. So we are using the current
4 pricing method as the baseline. But the NOPR recognizes
5 that the current pricing method that we are using could be
6 improved upon and seeks comments on whether other methods
7 would be more appropriate. And I believe the document
8 actually has a specific question that we are asking. It's
9 not a concrete proposal at this time, but it does have a
10 specific question that we are asking on pricing. So that
11 will be good to get comment on.

12 This is an area of concern to many. A lot of the
13 nation's governors have even gotten involved in this
14 question. So I look forward to the comments on this
15 important issue. And with regard to small generators, I
16 believe that the NOPR process has resulted in a less onerous
17 process for smaller generators to interconnect to the grid,
18 something that my two previous colleagues have commented on
19 and seem to be pleased with as well.

20 However, I would also like to hear from the
21 affected parties on this issue. Small power producers
22 should be a part of the nation's generation mix, and I
23 support procedures to ensure that they have the legitimate
24 ability to interconnect from the grid. I know that some of

1 they are farther away from transmission that makes it easy

1 to interconnect in areas where they are. We should make it
2 accessible and easier.

3 So thank you and everybody for all the hard work.

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1 CHAIRMAN WOOD: Looking back to before I came
2 here, observing the difficulty that generators were having -
3 - not across the country, but just some parts -- it was
4 clearly working well, but by and large, there were big parts
5 of the country a year ago that when there was at that time,
6 a dramatic upswing in the amount of generation that was
7 being built, primarily by the non-utility companies, that
8 there were obstacles that were being faced that were, in my
9 mind, needlessly being faced, and that needlessly prolonged
10 the attachment of needed power plants to our nation's grid.

11 11

12 I think the need for generic action was self-
13 evident, certainly, and I was glad that we all were of a
14 like mind as to that. On a policy basis, certainly it's
15 good to have a standard approach to something that lends
16 itself easily to standardization.

17 And on the administrative side, I do note with
18 lingering angst, that of the 40-some odd electric items on
19 today's agenda, about six of them relate to this
20 interconnection issue. That's a repeating number; it's
21 always about a half dozen or so that we're having to
22 basically remind a utility -- or two or three, or six --
23 what we've said in prior cases.

24 The best way to do that, I think, other than

1 cranking out the paper as we do here, is to adopt it as a

1 generic action for the whole country. So that's one good
2 purpose of rulemaking, is to, through an open process of
3 discussion, as opposed to the one where the China wall comes
4 up and we can't talk anymore, is to actually have a standard
5 that is how it ought to work.

6 My general thought is that as we move forward and
7 adopt this or something like this later this year, that this
8 would be the standard contract that a customer could avail
9 him- or herself of as they walk into a transmission owner
10 RTO and say I want to build a power plant. Here's where I
11 want to do it; here's what I need to do.

12 It has an aggressive schedule, an aggressive
13 timetable to get those plants through the process, through
14 the needed engineering studies and planning and
15 interconnection issues that are a prerequisite for safe,
16 reliable electricity, but also don't allow a utility that,
17 in these days, still may have generation of its own, that it
18 wants to favor the ability to slow those things down.

19 So, the substantive cuts that will remain here,
20 will heat up well by the parties. They narrowed it down to
21 nine issues. That's exactly what I hope we can utilize as
22 we continue, is the SMD rulemaking, to see just how much
23 consensus there is, then make the cuts on the lingering half
24 dozen or so items. That's the world that I'm used to.

1 Quite frankly, we can handle keying up nine

1 items; keying up 129 is a little bit harder, and from our
2 end, is not efficient. So I appreciate the hardworking
3 participants from across the industry, both transmission
4 owner and new generators and everybody else in between, and
5 the strong Staff leadership we had during the ANOPR
6 negotiations and on this process.

7 As a result of that process, there was a survey.
8 The results of the survey made pretty clear, as Linda just
9 pointed out, that one of the things that people faulted the
10 most, other than certainly some of the inefficiencies of
11 trying something new for the first time, was that the
12 pricing issue, while out there, there was a template that
13 said we're going to assume the Commission's pricing policy,
14 that that actually wasn't in play.

15 I guess, better late than never. So we had
16 promised, as Linda pointed out, a separate pricing, but
17 collapsing those two will actually allow people to look at
18 both the implementation agreements and protocols and the
19 pricing issue together, and will shorten up, we believe, the
20 ultimate resolution of all this issue, so that it can be put
21 forth and out into the market, and we can move on and get
22 back to infrastructure getting on the grid.

23 So I look forward to comments here. I am
24 comfortable with the cuts and decisions we made, but if you

1 all have something better, as you write back into us, we'll

1 read it, and certainly in the rulemaking process, as opposed
2 to adjudication, we can actually talk with you about it.

3 So, I look forward to that, as well. I support
4 and thank everybody for their hard work. Let's vote.

5 COMMISSIONER BREATHITT: Aye.

6 COMMISSIONER BROWNELL: Aye.

7 COMMISSIONER MASSEY: Aye.

8 CHAIRMAN WOOD: Aye.

9 SECRETARY SALAS: Next on the discussion agenda,
10 we will consider E-2 and E-20 together, Revised Public
11 Utility Filing Requirements. That's E-2, and E-20, Southern
12 Company Services, Inc. This will be a presentation by Gary
13 Cohen, Keith Pierce, Barbara Bourque, Ellen Shaw, and Andre
14 Goodson.

15 MR. COHEN: Good morning. E-2 is the Revised
16 Public Utility Filing Requirements Final Rule in Docket No.
17 RMON-8. This Draft Final Rule adopts revised filing
18 requirements for public utilities.

19 Under this rule, public utilities would file
20 electric quarterly reports covering transmission services,
21 cost-based power sales, market-based power sales, and other
22 generally applicable services, and will file standard forms
23 of agreement for the generally applicable services.

24 The electric quarterly reports will summarize the

1 pertinent terms of public utilities' current contractual

1 agreements, and provide specified data such as price,
2 quantity, and the parties about the power sale transactions
3 they made during the reporting period.

4 The new filing requirements will replace the
5 current quarterly transaction reports that public utilities,
6 including power marketers, file. The information reported
7 in the new electric quarterly reports will be posted on the
8 Commission's website, and be made available to the public in
9 an accessible, user-friendly requirement.

10 The new filing requirements are designed to
11 improve the quality and accessibility of information filed
12 with the Commission, and fully satisfy public utilities'
13 filing requirements under Section 205, and the Federal Power
14 Act. The information will help the public and the
15 Commission to detect instances of undue discrimination or
16 undue preferences, and will promote price transparency.

17 The new filing requirements will, at the same
18 time, reduce the filing burden on public utilities, and make
19 use of electronic filing for the filing periods ending on
20 July 31, 2002 and October 31, 2002. There will soon be
21 posted on the FERC Internet website, a template for public
22 utilities to download and use for the electric quarterly
23 reports.

24 These first two reports use the interim filing

1 format. That will be replaced when software currently being

1 developed is completed. The final software format will use
2 the same data elements as in the interim filings, but will
3 make the information much more accessible and usable.

4 Andre Goodson will now deliver the presentation
5 for E-20.

6 MR. GOODSON: Good morning. E-20 concerns
7 request for rehearing of the Commission's May 27, 1999 Order
8 in which the Commission denied a request by Southern Company
9 to eliminate the requirement that traditional public
10 utilities with market-based rate authority will file long-
11 term service agreements, and, instead, allow such public
12 utilities to report all transactions, long-term as well as
13 short-term, in quarterly transaction summaries, as power
14 marketers are currently permitted to do.

15 Instead, the May 27 Order eliminated the
16 disparity between the requirements for traditional public
17 utilities and power marketers by requiring the marketers to
18 file their long-term market-based rate power sales service
19 agreements.

20 The May 27 Order held the new reporting
21 requirement in abeyance, however, until the issue went
22 through a final Order an rehearing. In view of the final
23 rule's elimination of the requirement that public utilities,
24 both traditional and power marketers, file long-term service

1 agreements, the draft Order rescinds the May 27 Order's

1 requirement that power marketers file their long-term
2 market-based power sales/service agreements and dismisses
3 the request for rehearing on this issue as moot.

4 Further, in view of the final rule's adoption of
5 electronic quarterly reporting for all public utilities, the
6 draft Order dismisses Southern's request for rehearing as
7 moot. That concludes my presentation.

8 COMMISSIONER BROWNELL: I just want to commend
9 the Staff for undertaking what was, admittedly, the most
10 daunting task in terms of reviewing enormous amounts of
11 detail. I think that what you have achieved is a really
12 good balance between the need for more transparency and
13 consumer protection and the business needs for
14 confidentiality, so that people can operate successfully in
15 this new market.

16 So I was impressed -- and have to share that --
17 with the way you were able to balance those very strong
18 competing needs. While I'm sure everyone will not be
19 perfectly happy, I think you've done a terrific job.

20 I also think that this represents an efficiency
21 move that we need to undertake in everything that we do
22 every day. I thank you for your vision and your tenacity,
23 up to and including working out some of the details
24 yesterday afternoon.

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COMMISSIONER MASSEY: I think this is a good

1 rule, and I will be supporting it. It seems to me that what
2 we're trying to achieve here is much greater transparency in
3 terms of information that's available to market participants
4 and the public.

5 We have filing requirements now, but I take it,
6 based upon some of the conclusions of this rule, that the
7 requirements aren't well complied with, or the requirements
8 are confusing. What has been the nature of the problem of
9 noncompliance?

10 MR. COHEN: The quarterly transaction reports
11 have come in in a very inconsistent manner. The information
12 reported varies from report to report, and how it's
13 submitted by each company.

14 COMMISSIONER MASSEY: Why do we have confidence
15 that this rule will change that?

16 MR. COHEN: This rule adds specific data elements.
17 By going to the electronic format, it gets rid of a lot of
18 the vagueness that could be interpreted, as far as how the
19 information is to be presented.

20 COMMISSIONER MASSEY: Suppose I'm an entity that
21 has to report my transactional data to the Commission on a
22 quarterly basis? After this template is put in place, I
23 will take my data and make sure it complies with the
24 reporting template; is that right? Is that essentially a

1 computer program or computer software?

1 MS. BOURQUE: The interim template will
2 specifically detail what has to be filed, in what order it
3 has to be filed, so there won't be the ability to have
4 inconsistent data filings. Once we go to the ultimate
5 system, which we expect to have after the first two filing
6 quarters, there will be error-checking software and editing
7 software that will be external to the Commission, so that if
8 incomplete data is attempted to be filed, it won't be
9 allowed, and we'll be able to check a lot of that stuff
10 outside the walls of the Commission, and we will have error-
11 checking in the process, to make sure that the data is, to
12 the extent at we can automatically do it, accurate.

13 At that point, also, after the first two interim
14 filings, that data will be downloaded into a relational
15 database where we'll have a multitude of search capabilities
16 that will allow analysis and increased transparency by being
17 able to search this data in many different ways. I think
18 that if the filings -- if there are possible errors or
19 abuses that might have been able to occur, and that can't be
20 automatically detected, the fact that this information is
21 going to be out there and so much more readily accessible,
22 will allow Staff and the public to be better able to discern
23 when there are filings that are incomplete or erroneous.

24 COMMISSIONER MASSEY: This will be a FERC-

1 operated website that will have all this data on it?

1 MS. BOURQUE: Absolutely. One of the changes
2 between the NOPR and the rule that I think the industry will
3 be delighted with is that in the NOPR we had suggested that
4 each utility have their own website with this data, and we
5 said we were going to have a website also.

6 Upon reflection, and in looking at some of the
7 comments, it just didn't seem very economically efficient to
8 have something at every single utility that had to file this
9 when we were going to be replicating the same process here
10 at FERC. And we had to replicate that process at FERC.

11 The benefit of that, besides not forcing the
12 utilities to spend money on developing these websites, is
13 that there will be a uniform standard and presentation of
14 all of this data, so that you get the same look and feel for
15 every company, and you will be able to do cross-company
16 analyses of data and be able to look at certain points,
17 rather than just an individual company's filing.

18 That will occur after the ultimate system is
19 implemented. The interim system will just have the data
20 available, company-by-company in an electronic format,
21 somewhat analogous to what's being filed now on paper, but
22 it will be an electronic filing.

23 COMMISSIONER MASSEY: Let's say that the final
24 reporting system is in place by the end of the year or the

1 first quarter of next year, and I'm a reporting company.

1 Now, I would take my data and enter it into my computer
2 system, I suppose, in a way that is compatible with FERC
3 requirements; is that correct?

4 MS. BOURQUE: Right, we'll have software that
5 we're going to be giving to the companies, so that the
6 formats will be dictated by us. Most companies who have
7 numerous transactions will electronically map their own
8 databases and their information systems to our formats.

9 Once that initial mapping goes forward, after the
10 initial mapping and the initial filing, it will be virtually
11 no effort for them to make their filings, and it will all be
12 in standard format. That's for the transaction data.

13 There's also the contract data. The contract
14 data will be also entered in a very specific format that
15 will be uniform for all companies, and it will be done
16 through software that we provide them, that will allow us to
17 be able to perform a variety of analyses on it when it gets
18 filed here and entered into a database.

19 COMMISSIONER MASSEY: You've actually led me to a
20 point that I would like to make, and that is some of the
21 parties in this proceeding suggested that we really ought to
22 move to monthly filing of this data.

23 And the rule rejects that proposal and says, no,
24 quarterly is fine. But I was thinking about that. I'm a

1 filer, and once I have a template established, I either hit

1 the SEND button every quarter or I hit it once a month or I
2 hit it once a week.

3 It's hard for me to see that requiring the data
4 to be filed more often is in any way more burdensome on the
5 industry, yet it might provide much greater, quicker
6 transparency in the marketplace, which, it seems to me,
7 ought to be what we support.

8 So I'm interested in any of your comments on that
9 point. Is there any additional burden to a filer? Once the
10 template is set up, is there any additional burden in
11 sending the data to the Commission on a monthly basis?

12 MR. COHEN: Once the software that we're talking
13 about is in place, it will not be an additional burden, but
14 it does raise the confidentiality issues.

15 COMMISSIONER MASSEY: How does it raise a
16 confidentiality issue?

17 MR. COHEN: By reporting it quarterly, there's a
18 lag of 30 days before the information is disclosed. If you
19 go to monthly, it will change that balance.

20 COMMISSIONER MASSEY: It just means the data is
21 disclosed more frequently, but it would still be a month
22 after, potentially a month after.

23 MR. COHEN: If it's within the period, it would
24 be 30 to 120. This will change it to be 30 to 60.

1

COMMISSIONER MASSEY: So we're still talking 30

1 to 60 days after the transaction took place, if it was filed
2 on a monthly basis.

3 MS. BOURQUE: Depending on how long we said after
4 that month it was to be filed, but you are correct in your
5 assumption that after the ultimate system is deployed and
6 stabilized, because any new system may have some issues and
7 we want to make sure that everything is working well, the
8 delta and burden between filing on a monthly and filing on a
9 quarterly basis is minimal.

10 MS. SCHALL: I think the balance comes in and
11 whether people can use prices and what use they can make of
12 them. And that's why the balance, I think, was proposed at
13 quarterly, to have the balance between transparency, and, as
14 some commenters argued, they're concerned about possible
15 anticompetitive effects of having so much price information
16 available.

17 COMMISSIONER MASSEY: In other words, the closer
18 to real-time that it is available, the more opportunity
19 there is for collusion. But if it's still going to be 30 to
20 60 days after the transaction, I wonder about that.

21 MR. LARCAMP: That's when the transaction is
22 initiated, right? The transaction may be ongoing.

23 COMMISSIONER MASSEY: I understand that the
24 transaction could be ongoing.

1

MR. LARCAMP: For a monthly or quarterly, but you

1 would presumably, on a quarterly, catch more short-term.

2 COMMISSIONER MASSEY: I just wanted to raise this
3 issue. And the other issue is, we don't require the filing
4 of the actual contracts, and I'm wondering whether this
5 template of data that we require is going to be as
6 transparent. Tell me why that's better.

1 MR. COHEN: We did our best to identify all the
2 pertinent contract terms and have those be reported.

3 MR. LARCAMP: I think we also better because it
4 allows the searchable function going forward by having it in
5 the template format as opposed to having the agreement on
6 file. But having customers on the outside or Staff that are
7 looking to do a comparison, not having a searchable
8 function, if the contract is just here with the deviations,
9 coupled with the fact that if we're going to a standard form
10 of agreement with deviations for nonconforming contracts,
11 you know, the public will know, unless there's a
12 nonconforming on file, that the standard terms and
13 conditions are the standard terms and conditions, and they
14 can look for those to get the same information.

15 COMMISSIONER MASSEY: So you would argue that
16 this is greater information and greater transparency and
17 actually more user friendly because it will be in a format
18 where you can get on your computer and search the data sets
19 for whatever information you want?

20 MR. COHEN: That's correct.

21 COMMISSIONER MASSEY: I haven't said that
22 artfully, but that's essentially it.

23 MS. MARLETTE: Commissioner Massey, I think also
24 the public utilities would have to have the contracts

1 available at their place of business for public inspection

1 so they are obtainable.

2 COMMISSIONER MASSEY: They are obtainable. So we
3 think we're getting greater transparency here and the
4 contracts would still be obtainable and available.

5 Well, I support that provision. I think we're
6 doing the right thing, and it seems to me that we're getting
7 much greater transparency. This rule is a dramatic
8 improvement over what we had, and it has my strong support.

9 My minor quibble is, I would have supported the
10 rule that required the filers to hit the button every month
11 rather than every quarter to send the data to FERC. I still
12 think in the future as we gain more experience with this
13 rule, we ought to consider that again.

14 Thank you, Mr. Chairman.

15 COMMISSIONER BREATHITT: A lot of the good things
16 about this order have been stated, and I would just like to
17 associate myself with my colleague's comments. I do think
18 that the quarterly though is appropriate and that we will
19 get information much sooner than -- well, in a format that
20 will be much more easily used by all parties.

21 I would also like to note that the burden
22 associated with preparing the electric quarterly reports is
23 estimated to be no more than two hours once the initial
24 setup is completed, which is going to take some time, as

1 compared to six hours per reporting period for the current

1 paper quarterly reports. So that will reduce the burden in
2 terms of hours spent.

3 But I think the final rule does strike an
4 appropriate balance between the Commission's and the
5 public's need for timely information and the public
6 utilities' concerns about the possibility of competitive
7 injury through the disclosure of certain transactional
8 informations, and I support the rule.

9 CHAIRMAN WOOD: As do I. I think it's a good
10 example of good government at its best, harnessing the new
11 technology as you all have laid out, eliminating much of the
12 paperwork and the reporting burden without losing any of the
13 benefits of the data that could come there, and in fact, for
14 all the reasons you all have laid out, enhancing that data.

15 It treats all power sellers the same so we don't
16 have this disparity which brings up the E-20 order. Makes
17 markets transparent for customers in a way that really makes
18 sense. I do look forward to us getting to the relational
19 database. Appreciate the efforts of OCIO and the folks on
20 the computer side who worked with us to get that interim
21 template set up and look forward to getting the final
22 database operational on time.

23 One of the things I was interested in was, in the
24 December order which we called the data sets order, we

1 actually asked parties to contemplate aggregating the daily

1 data into a high, low and average category format. This
2 order concludes that while that may have been a potentially
3 lessening burden, it's not really envisioned under the
4 Federal Power Act that we can do that.

5 Other agencies that have tried to do that, the
6 ICC and the FCC, have both been told by courts with
7 authority that that doesn't work. And they have the same
8 kind of statutes we do. So really, transactional data is
9 what this order requires. It's what the Commission, at
10 least in its market-based certificates, has always required
11 parties to report.

12 I noticed like Bill that that has probably been
13 honored more in the breach than in the compliance, but
14 there's nowhere to run here. You've got a database. You've
15 got to fill it out. And as Barbara points out, it gets
16 bounced out if you don't.

17 So, good. The future needs for new data and the
18 lesser needs for old data we'll continue to look at, and
19 the information initiative project that we discussed at
20 about three or four meetings ago with Ginny and George on
21 the Staff that are working that, and will be subject to, now
22 that we have Mr. Hederman -- welcome, Bill -- with the
23 Office of Market Oversight and Investigation here, certainly
24 he and his folks will be able to, as they get their feet on

1 the ground, make an analysis of what it is we really need,

1 what may already be out there in fact from other reporting
2 requirements to other agencies as data that we need really
3 to handle the world that we're in now and not continue to
4 linger with the one we used to work with.

5 Finally, my hat's off to you all. I've enjoyed
6 working with you all these past three or four weeks on
7 pulling all this together and appreciate all the work that
8 went into getting us here. Because this is actually the
9 first formal order number, fill in the blank, since I've
10 been here. So I would propose that we make this order
11 number 2001 since that's what it was offered up for the
12 public to notice.

13 SECRETARY SALAS: We will do that, Mr. Chairman.

14 CHAIRMAN WOOD: I will support the order.

15 COMMISSIONER BREATHITT: Aye.

16 COMMISSIONER BROWNELL: Aye.

17 COMMISSIONER MASSEY: Aye.

18 CHAIRMAN WOOD: Aye.

19 SECRETARY SALAS: The next item on the discussion
20 agenda is E-3, Investigations of Terms and Conditions of
21 Public Utility Market-based Rate Authorizations, with a
22 presentation by Deborah Leahy, Joyce Kim, Jerome Pederson,
23 David Hunger and Michael McLaughlin.

24 MS. KIM: Good morning. E-3 addresses the

1 Commission's proposal to revise all existing market-based

1 rate tariffs and authorizations to include a provision
2 prohibiting the seller from engaging in anticompetitive
3 behavior or the exercise of market power and making the
4 seller's market-based rate authority subject to refunds or
5 other remedies as may be appropriate to address any
6 anticompetitive behavior or exercise of market power.

7 The draft order requires all market-based rate
8 tariffs and authorizations to include the following
9 provision:

10 As a condition of granting market-based rate
11 authority for short-term bilateral sales outside RTO/ISO
12 markets with Commission-approved market monitoring and
13 mitigation measures in place, the Commission reserves the
14 authority to require refunds back to the first day of a
15 transaction if it finds that the seller has engaged in
16 anticompetitive behavior or the exercise of market power.

17 Such refunds would be available only if a
18 complaint seeking refunds is filed no later than 30 days
19 from the date the rates are reported to the Commission and
20 made public.

21 The draft order requires that any alleged
22 violation of the tariff provision be made on a transaction-
23 specific basis.

24 Further, the draft order provides examples of

1 what the Commission might consider legitimate reasons for a

1 generator not offering its power during periods when the
2 market price exceeds its marginal cost and clarifies that
3 marginal costs include opportunity costs.

4 Another option would be to apply the refund
5 obligation in the tariff provision to all short-term
6 transactions, thus including short-term transactions in
7 organized spot markets.

8 Thank you.

9 COMMISSIONER BROWNELL: Walk me through, if you
10 will, the implications for applying such conditions to those
11 markets with a single clearing price, organized short-term
12 markets. It strikes me as a rather complicated approach in
13 organizations that in fact have other consumer protections
14 in place. How does that work?

15 MR. HUNGER: If we were to do that, if we were to
16 apply this condition in markets with a single clearing price
17 auction, we would have to not only look at a specific
18 transaction between a single buyer and a single seller. If
19 market power had been exercised, that would raise the market
20 clearing price, so all the other suppliers would be
21 receiving a higher price, and all buyers would be paying the
22 higher price.

23 So we would have to subject -- from there it
24 follows that we would have to subject all sellers to

1 refunds, to potential refunds, once we identified how much

1 the guy who exercised market power raised the price. And in
2 order to make the market whole, all buyers would have to be
3 refunded, and sellers would have to figure out what each
4 seller owes. It's just sort of doing the market price
5 recalculation like we had to do in California, and our
6 thinking in this order was that while conceptually that
7 would be the way to remedy market power, the harm in terms
8 of introducing uncertainty into all sellers' ability to hang
9 onto the money they've made and just the issue of actually
10 recalculating all that makes it impose more harm than it
11 does good. The good being protecting consumers.

12 So there is this balance. The thinking in the
13 drafting of this order was it went too far. If we went into
14 markets, single clearing price markets. In addition, those
15 markets already have something in place. So we weren't so
16 much trying to pick on non-RTO/ISO markets as trying to make
17 sure we have something in place in markets where there isn't
18 anything in place. That's why we narrowed it down to the
19 bilateral markets that don't have market mitigation.

20 COMMISSIONER BROWNELL: That don't have other
21 consumer protections in place that have been approved by
22 this Commission?

23 MR. HUNGER: Yes.

24 COMMISSIONER BROWNELL: Kind of then walk me

1 through, assuming that that answer is put aside, that we're

1 really focusing on markets where there are not existing
2 consumer protections or organizations like RTOs there to
3 protect them, just walk me through how this works. Because
4 I think one of our goals, and I think you've achieved it, is
5 this balance for the need for consumer protection which we
6 all agree on, but some limitation to the exposure for those
7 in the market who can't function successfully with kind of a
8 never ending expectation of refunds.

9 So just walk us all through the timing and how it
10 works and what the exposure is if you would, please.

11 MR. HUNGER: Sure. The heart of it I think is
12 the ;buyer would have the opportunity to come in and say,
13 look, this guy exercised market power on me or engaged in
14 anticompetitive behavior and raised a price I had to pay,
15 and we recognize that the seller in turn might have
16 legitimate reasons to have offered up his power at what
17 appears to be higher than his marginal cost or higher than
18 his running costs.

19 There are a lot of reasons why a seller who has a
20 hydro facility, in some sense their running cost is very
21 close to zero. But they have these huge opportunity costs.
22 Imagine a plant facing an emissions limitation on the number
23 of hours they can run. These guys have legitimate
24 opportunity costs. So while we try to let the buyer come in

1 and say, look, it looks like there's been market power

1 exercised here because we have to protect -- that's our job,
2 one of our jobs, part of our job. But on the other hand, we
3 try to recognize the position the sellers are in as well.
4 And as far as the process, it's tied to the quarterly
5 reporting that just went out in E-2. In order to limit the
6 amount of exposure, that was one of the issues that
7 commentors raised.

8 We heard some very compelling arguments from
9 suppliers, people who built plants, people who want to build
10 plants, people who finance people who build plants, that
11 this was introducing an awful lot of uncertainty to these
12 markets. And so we really wanted to not only pin down who
13 exactly would be potential subject to refund, but for how
14 long.

15 So the person who is claiming to be harmed is
16 tied down, has 30 days to come in after the quarterly
17 reports come in, so they'll have a chance to look at it. In
18 that way, again, a balancing act here between providing
19 certainty on the supply side and protection on the demand
20 side. And that's where we came down in this draft order.

21 COMMISSIONER BROWNELL: Share with us, if you
22 will, some of the examples that you give as to conditions
23 that might exist that would legitimately cause someone to
24 withhold from the market. Because I think whatever we do in

1 providing certainty, we also need to provide some discipline

1 and guidance so we don't entertain a lot of what might be
2 deemed to be frivolous suits.

3 I think the clarity that we give in terms of what
4 we consider appropriate or inappropriate is helpful.

5 MR. HUNGER: Sure. There's issues like
6 maintenance, scheduled maintenance. Plants need to go down.
7 There's issues about, gee, this is a 500 megawatt plant.
8 Why are they only offering up 450 megawatts? Well, the
9 plant owners, and maybe if it's a day ahead or a sort of
10 medium-term contract, they don't know exactly what the
11 availability of their unit is going to be, so you have to be
12 a little bit careful. And maybe they won't offer all of it
13 up, or they'll offer the last few megawatts up at a very
14 high price and that's to ensure that they cover this
15 probabilistic availability.

16 They don't know exactly how much. The ones I
17 think are easier to think about, think of the hydro plants.
18 It's May and the price is \$60 a megawatt hour or something,
19 but you think the price is going to be \$90 a megawatt hour
20 in July and you've only got so much water. You have to make
21 a choice about whether to run now or later.

22 In some sense, we want these guys making the
23 choice. That's an efficient allocation of resources when
24 the water gets run in the summer when the value is higher.

1 And, of course, there are plants that face different

1 environmental constraints and places where there aren't
2 tradable permit markets. Some plants have a straight you
3 can run 750 hours out of the year. So they have to choose.
4 The guy running this business would want to run in the 705
5 highest priced hours of the year, and we want him to do
6 that. Of course, they can't pick it exactly.

7 So there are lots of times when there are
8 legitimate reasons not to be running. Those are pretty
9 verifiable reasons. It's a pretty easy story to tell.

10 Look, I've only got so much water. I can't be running all
11 the time. Or look, this is an old plan. It wasn't meant to
12 run this hard, and I need to be careful with this thing or
13 it's not going to be available in the summer.

14 So I think -- we've heard these stories before.
15 There are a lot of good reasons not to run. And of course,
16 there's plain old withholding, too, to drive up price. We
17 want to eliminate that. Let's pin down all the legitimate
18 and verifiable reasons not to be running or to be offering
19 up your power at a high price.

20

21

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24

1 COMMISSIONER BROWNELL: Thank you. I'd just
2 repeat again that the order as drafted which creates I think
3 some certainty for both those in the market providing the
4 commodity and the consumers who are being served as well as
5 I think some good guidance in terms of what's acceptable
6 behavior and what is not. I think we've achieved that
7 balance. My own inclination would be to limit this
8 application outside of the organized markets because it
9 seems to me somewhat redundant and somewhat counterintuitive
10 to say that we're setting up market monitoring and consumer
11 protections that we've approved but we're going to add yet
12 another overlay on this. That strikes me as not terribly
13 productive. I'll listen to what my colleagues have to say,
14 but thank you.

15 COMMISSIONER MASSEY: I think one of the key
16 motivations for this tariff condition was our experience in
17 California. Our orders in the California case found a
18 dysfunctional market. I don't know that we ever found any
19 bad behavior. I don't know, there was one incident in which
20 there was bad behavior but otherwise we didn't point any
21 fingers. We said it was a dysfunctional market that led to
22 the high prices. In the California crisis, the prices began
23 to spike in May and June of the year 2000 and were very high
24 for almost a year. By the time a complaint was filed and a

1 refund condition set, it was October 2nd. That was the

1 refund trigger. So from May of 2000 until October 2nd,
2 there was no refund condition in place, and so no
3 opportunity for a refund. So how would this condition
4 change that situation?

5 MR. HUNGER: I don't think this proposal changes
6 that situation as much as this proposal recognizes that the
7 situation has changed in California and these other markets
8 that they have now put in place some form of Commission
9 recognized and approved market power mitigation so that I
10 won't happen in the first place.

11 COMMISSIONER MASSEY: I think the point I'm
12 making, perhaps not as directly as I should, is that when we
13 first took this up several months ago, I said I felt we
14 needed a refund condition that was triggered by a
15 dysfunctional market. Frankly I still think that's what we
16 need. There aren't the votes for that on this Commission, I
17 don't believe, but I wanted the record to be clear that that
18 would be my preference. It seems to me that this problem is
19 arising from the California crisis and yet our approach here
20 doesn't really solve that problem of a market that it out of
21 control because it's dysfunctional and there's no bad
22 behavior that we found. And yet all of the burden of that
23 dysfunction falls on the customers, the consumers, and I
24 object to that, but that's point number one.

1

Point number two is I think just last month, or

1 within the last few months, we concluded that a seller had
2 exercised market power in PJM's ICAP market. That is
3 probably our best market. There is Commission approved
4 mitigation in place I think. Now it strikes me as unusual
5 that we would exempt all ISO RTO markets from this condition
6 when that I think is the only case I can recall in recent
7 memory where we've actually found the exercise of market
8 power and it happened to be in an ISO RTO-type market. So
9 what is your response to that? Why would we want to exempt
10 those markets from this condition?

11 MR. HUNGER: I think unfortunately something,
12 when you have to strike a balance, I think you have to give
13 something up. The thinking there is while we recognize that
14 there may be something that could slip through the cracks in
15 an RTO or ISO market, with market power mitigation in
16 effect, the harm done to these markets by imposing a
17 condition like this would exceed the potential benefit from
18 avoiding an instance like that in the case where the
19 problem's been fixed by PJM.

20 But you're right. The market power was
21 exercised. We were finding that nobody got their money
22 back.

23 COMMISSIONER MASSEY: This tariff condition is
24 basically about taking the refund effective date and pushing

1 it back in time. That's essentially what this does because

1 without a tariff condition at all, there is generally no
2 refund condition. Someone has to file a complaint or this
3 Agency initiates a complaint, and then 60 days thereafter is
4 the earliest date under Section 206 that we could have a
5 refund protection in place. And so this tariff condition
6 says we want the ability to reach back and as long as the
7 complaint is filed within 30 days of the reporting, we want
8 to be able to reach back and impose a refund condition for
9 that bad behavior. As far as it goes, I support that. I
10 think that is a very good idea. I wish it went a little
11 further. But I support it as far as it goes. But isn't
12 that what this is all about essentially? The bottomline
13 here is pushing to an earlier point in time what the refund
14 effective date is and triggering it by a bad behavior
15 condition.

16 MR. LARCAMP: Commissioner, my own view is that
17 we are trying to comply with the directives in 206 with
18 respect to the refund effective date. We are, in exercising
19 authority under 205, to allow sellers to engage in market-
20 based transactions. We are attaching a condition that we
21 believe is necessary to ensure that their rates will remain
22 just and reasonable, so I don't believe that we are, I mean
23 that may be the practical effect, but I don't think that we
24 are trying to change the refund effective date. I think we

1 are recognizing this in this evolving marketplace here that

1 particularly I think until we have better markets in place,
2 through standard market design, that we need to be more
3 comfortable that our grant of market-based rates will in
4 fact result in rates that are just and reasonable.

5 COMMISSIONER MASSEY: I agree with that goal, but
6 the practical effect, however, everybody may have different
7 motivations, but isn't the practical effect, doesn't it have
8 to do with the refund effect?

9 MS. MARLETTE: Can I just jump in? I agree with
10 Dan. The practical effect yes is to provide some added
11 refund protection for customers but this order has drawn a
12 very careful balance not to circumvent the restrictions in
13 206, but to pinpoint that category of sales where we think
14 there is the greatest potential to exercise market power and
15 narrowly tailor what we're doing the refund condition to
16 that category of sales. I think what a lot of this boils
17 down to is the Commission's confidence in the market
18 mitigation that it has put in place in the organized spot
19 markets, and the reason the staff came to the conclusion
20 that this should only apply to the bilateral short-term
21 sales outside of ISO markets is because the Commission has
22 put in place your market mitigation. There may be
23 circumstances, we thought we'd resolved the problems in
24 California we hoped. There may be circumstances in other

1 areas of the country where you may never get the market

1 mitigation perfect and you have to over time adjust it
2 accordingly. But the presumption here is that the
3 Commission has done its best job to get that mitigation
4 right at that particular point in time, and therefore we
5 don't need that added protection.

6 And again, as Dave and others have said, the
7 other issue is balancing it against the huge regulatory
8 uncertainty you create if you apply this to a bigger
9 category of sales.

10 MR. LARCAMP: Staff I think has been pretty up
11 front that we're trying to balance effective oversight and
12 protection of customers in terms of the rate side with the
13 protection of customers by getting additional infrastructure
14 built. That in my mind is the most effective way to
15 discipline price and protect customers. And I think we see
16 the balance where the Commission has already specified
17 monitoring and mitigation in spot markets as enough to focus
18 this condition in those markets where there isn't existing
19 monitoring or mitigation in place, and where the customers I
20 think are most susceptible because with these short-term
21 transactions, they are really more likely to be forced to
22 buy from a seller that may be seeking to exercise market
23 power as opposed to longer-term transactions where they can
24 say, fine, I'll build my own plant or I'll contract with

1 someone to build and I will through my actions in either

1 contracting or adding my own supply long term defeat your
2 attempt at exercise of market power to me and my customers.

3 COMMISSIONER BREATHITT: I'm going to support a
4 lot of what you're saying too, Bill. The November 20th
5 order proposed a condition to be applied to all existing
6 market-based tariffs, which is what we're talking about to
7 prohibit sellers from two things; from engaging in
8 anticompetitive behavior and from the exercise of market
9 power. Now this is a very logical premise and it goes
10 without saying. However, the implementation of this needs
11 careful thought and structure because how we change the
12 tariff is crucial to both consumer confidence and healthy,
13 well-functioning markets.

14 There were a lot of legitimate concerns raised in
15 the comments and at the technical conference that we held at
16 FERC last month, and many said the proposed tariff condition
17 was overly broad or vague. Those were sentiments that I
18 expressed last fall when this was first discussed, and I
19 think pretty vocally, as I recall. There were also comments
20 expressing concerns about the uncertainty in the marketplace
21 that could result from this refund condition being applied.
22 So the Commission was left with balancing this balance we're
23 talking about, balancing the need to protect consumers
24 against unreasonable and unjust rates with the legitimate

1 concerns that I stated and that other parties have stated.

1 So I am open to approaches and options for
2 limiting that uncertainty and I think the order does that in
3 a lot of areas. But over the past several weeks, we
4 internally and at the technical conference have discussed
5 several means to clarify the scope and the application of
6 this refund condition. We could limit the application of
7 the condition to short-term bilateral market-based rate
8 sales. Other options are to clarify that request for
9 refunds be made on a transaction-specific basis and that
10 complaints be made within reasonable time frames.

11 Other options would be to exempt RTOs and ISOs
12 with Commission approved monitoring and mitigation. Quite
13 frankly, exempting short-term sales in RTOs and ISOs from
14 this tariff condition is fraught with difficulty. My
15 concern about this option is one of equity. We need to have
16 fair and equal treatment for market participants across the
17 country. I don't believe that exempting a few areas of the
18 country from this provision while imposing a refund
19 condition on the majority of the market is equitable. This
20 bifurcated approach may also have some unintended
21 consequences. For example, trading could be affected as
22 parties decline to sell into certain areas, favoring other
23 areas instead or new products can be introduced that are
24 later discovered to have flaws or a lack of transparency.

1

So let me say that my reluctance to exempt RTOs

1 doesn't come from a concern that the market monitoring in
2 these markets is necessarily deficient. It doesn't come
3 from that at all because I believe the Commission is trying
4 to do a good job with getting the market monitors up and
5 running and doing what they are going to be and are being
6 required to do. However, I know that even RTOs with market
7 monitoring, the Commission still has complaints filed
8 concerning the rates for short-term transactions, especially
9 in the day-ahead and the real time markets. There is an
10 anonymous nature to trading in short-term markets and it
11 just make sense to me to not exempt RTOs from this tariff
12 provision for now.

13 With short-term markets, I think you lose some
14 transparency that you have in bilateral deals and even in
15 RTOs where we have approved market monitoring, dysfunction
16 is still somewhat of a work in progress. So once again, my
17 preference would be to treat all areas of the country
18 equitably and the same in applying a refund condition. I
19 wasn't comfortable going down this path back in the fall. I
20 understood why we needed to do it but if we're going to
21 embark on a new method to attach to approving market-based
22 rates, I think it needs to be fair and equitable and applied
23 in all areas of the country and not just in areas where
24 there are not RTOs.

1

CHAIRMAN WOOD: Let me just throw out where I am.

1 I, like Nora, think it's not fair and equitable now. And
2 right now you have organized spot markets that have a lot of
3 rules over them in the ISOs. And I don't even believe that
4 the one RTO that we have approved has the organized spot
5 markets, so in the four ISOs that we've got, we do have a
6 lot. We have RTO or ISO market monitoring units. We have a
7 batch of mitigation tools which have been substantially
8 revised. Certainly in California, we're still working on
9 what those would look like. But I've seen a lot of
10 revisions on the ones in New England, we've got one in New
11 York, and I haven't seen anything new in PJM lately but I'm
12 sure we'll see it. So today there's already a higher
13 standard set where there are organized spot markets and I'm
14 kind of looking at I think we need to make sure that the
15 people in Colorado and Louisiana and Nevada all have some
16 protection as well. We've got the market monitoring units
17 and the prospective mitigation. We now have our Office of
18 Market Oversight set up and starting to staff up soon. I
19 think there will be, Bill, some instances where water slips
20 under the bridge. In the ICAP PJM case, that is a good
21 example, but I think the tools that we have set up, not in
22 this order, but that we've set up through all the other
23 dockets that we've got have in fact set up on early warning
24 systems that are more sophisticated than the ones we had

1 twenty months ago out west than we had anywhere.

1 And I think, to come back I guess to Cindy's
2 words, that balance. Yes, there might be a couple that slip
3 through like PJM's ICAP but the offsetting balance to that
4 is that we have set it up to where we are now allowing
5 really basically seven more months, and people could do
6 without this provision, for them to assay the market, assay
7 the data from the market that we juts approved in the last
8 item and do something about it. So I think the cost of
9 regulatory risk would ultimately be borne by customers and
10 the steps that are taken elsewhere in this order and I think
11 we all do agree that are significant in handing that balance
12 back to where it ought to be. And I think, Linda, you made
13 those out focusing on short-term, focusing on the additional
14 five-month window, the quarterly reporting period plus the
15 30 days for the power marketer to file his quarterly
16 reporting report plus the 30 days for the buyer whose
17 aggrieved to file a complaint here.

1 Those additional five months do reduce what I
2 call the yawning black hole of refund obligations, such that
3 the back door really is shut. I think that's a pragmatic
4 response.

5 I think that also, David, you laid them out very
6 well. The examples of physical withholding and economic
7 withholding that we had not really defined before are in
8 this Order to give a lot of context to what is, in effect,
9 the pragmatic, must-offer requirement for everybody, which
10 says we're going to expect you to make your product
11 available unless you have these exceptions, such as down for
12 maintenance, the opportunity costs for hydro, et cetera.

13 We've learned a lot from California. Certainly I
14 think the main lesson we've learned on that one is that
15 before we start putting that must-offer requirement in
16 there, people really didn't know that it was illegal to
17 withhold, and you could go after a Sherman Act case. But by
18 the time your grandchildren are through college, those might
19 get resolved.

20 So, trying to do it in a realistic timeframe here
21 is a good thing. The pragmatic, must-offer requirement
22 really comes through this Order to me as a definite positive
23 step.

24 So I understand, and, Linda and I talked last

1 night again about this, and you're looking at this as

1 disadvantaging customers in non-RTO ISO markets. I guess I
2 view it that the customers in those markets right now have
3 protections that I'd like to see go to the rest of the
4 country while we're still getting RTOs set up everywhere
5 else. So this is transitional.

6 I do think that David laid out a couple, and
7 Staff briefed me last night about the downsides of getting
8 into a spot market, a single clearing price spot market.
9 Your line of questioning kind of brought some of that out,
10 Nora.

11 I think that's more negative for the market in
12 terms of the regulatory risk premium that customers have to
13 pay than I think we gain by capturing that. I recognize
14 that some will get through, but I don't think it's
15 prophylactic either way, but it's what we need to do here,
16 look at where the greatest potential for sellers to exercise
17 market power is and do something about it. My preference
18 would be to go with the exception for the RTO/ISO markets,
19 although I'm sensing that we're probably split on that
20 issue. We can talk about it some more. We can more along
21 and come back to this some other day.

22 Anything else?

23 COMMISSIONER BREATHITT: Just one clarification:

24 My uneasiness and discomfort with this particular provision

1 was that I felt that consumers -- it wasn't that consumers

1 in non-RTO areas would be disadvantaged. It was that the
2 treatment for consumers all across the country should be the
3 same, and I didn't want consumers in areas where there were
4 RTOs to be disadvantaged.

5 There's one part of the Order that I do like, and
6 that is the burden of proof would be placed upon the
7 Commission if we institute a complaint on our own motion,
8 or, on a complaining party, the burden would be on either us
9 or the complainant to well-support and to prove their case,
10 and the party who is being complained about would be in the
11 mode of explaining and defending their actions.

12 So I thought that was good. There is a lot in
13 the Order that I like. It's just this one provision on the
14 exemption that I didn't.

15 CHAIRMAN WOOD: I think that's where we all are.
16 There's a lot of good here, and I do think it's important
17 for us to have this discussion, even though we're not at
18 consensus on with the whole Order.

19 It's important that on what I consider the really
20 big-ticket issues, that we are. I think that's important
21 for the outside world to know, and the main reason I wanted
22 us to have this discussion today.

23 COMMISSIONER MASSEY: I think I will be more
24 confident, once the standard market design is in place,

1 because our working paper lays out the kinds of mitigation

1 that we want to see. As I recall, it's much more specific
2 and essentially says this will be a part of the standard
3 market design.

4 I would take more comfort from a tariff condition
5 that says once you're in within the standard market design,
6 once that is applicable to you, and once the standard market
7 design-type markets are set up with the mitigation in place,
8 then the condition does not apply. So I don't know whether
9 there is any room for common ground with a proposal like
10 that, but I'd be willing to vote for that as a compromise.

11 CHAIRMAN WOOD: Let's kick that around the next
12 couple of weeks and see what we can do.

13 MS. MARLETTE: Mr. Chairman, could I raise one
14 issue, just for the benefit of the outside? And it's on
15 something that I don't think we've discussed here, but on
16 which I do think there's agreement. And there was great
17 fear on the outside that whatever condition the Commission
18 would come up with, it would somehow apply it retroactive to
19 the refund-effective date.

20 This Order does not do that. Any condition would
21 be applied prospectively only, only take effect after the
22 Order issues, and I think there is uniformity on that, just
23 to allay that concern.

24 COMMISSIONER MASSEY: My preference would be to

1 have a dysfunctional market condition. I wouldn't dissent

1 on that basis, because I know that when I raised that the
2 last time around, there weren't the votes for that, and
3 there still aren't the votes, and I'm sort of the Lone
4 Ranger on that point, and I realize that.

5 So I think what we have here, from my
6 perspective, is half a loaf or more. I agree with the
7 provisions in here that lay out the rationale for this. I
8 agree with the provisions that define opportunity costs with
9 more specificity, and that lay out that there are instances
10 in which withholding of generation is justified, based upon
11 the facts, and I agree with all of that.

12 So, there are provisions of this proposal that I
13 like. This exempting of ISO/RTO markets, at this point in
14 time, that really concerns me. And I have listened to the
15 debate on that, and I still have the same point of view on
16 that. So that's really where the rubber meets the road for
17 me on this proposal right now. That exemption troubles me a
18 great deal.

19 CHAIRMAN WOOD: Could that be remedied by
20 defining with a lot more specificity, what we mean by
21 Commission-approved market monitoring and mitigation?

22 COMMISSIONER MASSEY: I'd be willing to look at
23 that. It could very well.

24 CHAIRMAN WOOD: All right, we will move on to the

1 next item. Thank you all very much.

1 SECRETARY SALAS: The next item on the discussion
2 agenda is E-4, Trans Link Transmission Company, LLC, and
3 others, with a presentation by Allen Haynes, David Hunger,
4 Laurie White, and Michael McLaughlin.

5 MR. HAYNES: Good morning, Mr. Chairman. I am
6 Allen Haynes, and with me are the other members of the Trans
7 Link team, Laurie White and leftover from E-3, David Hunger.

8 8

9 (Laughter.)

10 MR. HAYNES: We have this morning, a draft Order
11 concerning the proposal by several private and public
12 transmission owners and one electric cooperative to form an
13 independent transmission company or ITC that would perform
14 certain RTO functions delegated to it by the Midwest ISO.

15 The draft Order accepts the application to form
16 Trans Link, with certain modifications. The acceptance of
17 this proposal furthers the Commission's strategic plan,
18 particularly in Objective 2.1, which is to advance
19 competitive market institutions across the entire country,
20 and Objective 1.1, removing roadblocks impeding market
21 investment.

22 This Order establishes a framework for effective
23 and efficient delegation of RTO functions to a for-profit
24 dedicated transmission company. This hybrid framework

1 combines the natural incentives for efficiency and

1 innovation of the ITC with the advantages of the regional
2 perspective inherent in the RTO.

3 The development of ITCs also has the potential to
4 encourage greater investment in transmission infrastructure.

5 Trans Link proposes to offer transmission service for all
6 transmission requests whose source and sink are in the Trans
7 Link footprint.

8 It proposes to maintain and operate the
9 transmission facilities contributed by sale or agreement by
10 the participant companies. Trans Link proposes to operate
11 seamlessly in close coordination with the Midwest ISO,
12 according to a series of protocols agreed to by both
13 parties, which explicitly provide for one-stop shopping for
14 open-access transmission service.

15 The draft order accepts the applicant's proposal
16 to transfer control of their transmission assets to Trans
17 Link and to perform those functions that can be delegated
18 from the RTO.

19 The Order does modify the proposal in a few
20 respects: Trans Link must provide transmission service
21 under the Midwest ISO open-access tariff, rather than its
22 own, however, Trans Link is authorized to maintain its own
23 schedule in the Midwest ISO tariff.

1 It must also operate solely through the Midwest ISO OASIS
2 and not through its own node. The draft order further
3 describes how TransLink can provide certain functions
4 related to ancillary services, total transmission capability
5 calculation and planning and expansion.

6 The overriding objective of the draft order is to
7 allow incentives for facility and efficiency enhancement
8 without placing in jeopardy a seamless market for wholesale
9 bulk power in the whole Midwest region.

10 This concludes my presentation. Thank you.

11 COMMISSIONER BREATHITT: I will be concurring on
12 this order and also on the Alliance order today. And I
13 would like to explain that reasoning. I am pleased that we
14 are voting out this order and the Alliance order today,
15 because in doing so, we are taking a necessary step forward
16 in approving an independent transmission company model and
17 making an initial cut on the functions that an ITC under an
18 RTO umbrella will be able to share with the RTO.

19 I agree with my colleagues that it is important
20 at this time to give certainty to these ITC entities that
21 can bring significant benefits to the industry, including
22 improved asset management, development of innovative
23 services, and improved access to capital in order to build
24 the infrastructure we desperately need in many parts of the

1 country.

1 I am concurring on today's orders because I agree
2 in principle that we should make these difficult calls. And
3 I agree with the logic on each of the separate decisions on
4 the functions we are allowing the ITC to share with the RTO.

5 However, I am still concerned that our calls on
6 each of the functions taken as a whole may not allow ITCs to
7 fully prosper and fulfill all the bright promise that we see
8 in these entities. I am frankly worried that we are using
9 one hand to pat ITCs on the back for bringing us a structure
10 that we hope will result in an infrastructure and improved
11 use of their existing interstate transmission lines, but on
12 the other, we are taking away many of the functions that
13 they asked to retain to be a viable business under that
14 structure.

15 I really hope I'm wrong, and I'll be the first to
16 shout. I'm not promising that I'll do it in this room in a
17 month from now.

18 (Laughter.)

19 COMMISSIONER BREATHITT: But I hope that I'm
20 wrong. Although I hope that TransLink and Alliance will see
21 today's order in a positive light and find that there is
22 substantial ability for them to go forward with their
23 business models.

24 I am willing to entertain changes to these

1 functional assignments if ITCs inform us that we have not

1 given enough functionality to support the future viability
2 of these companies.

3 Today's order narrows the possibilities for
4 TransLink that the Commission envisioned an ITC would be
5 able to perform under the MISO Appendix I filing. For
6 example, Appendix I set forth the responsibilities that can
7 be delegated to an ITC either entirely or subject to varying
8 degrees of oversight. Some of these include security
9 coordination, Section 205 rights, congestion management,
10 line loss calculations, tariff administration, operations
11 and market monitoring.

12 I have not listed all of the Appendix I
13 responsibilities, but of the ones that I mentioned, we are
14 allowing very limited Section 205 rights for TransLink, and
15 we allow some scheduling, and we are allowing certain
16 planning functions; clearly, not all of the Appendix I
17 responsibilities. However, I don't see this order as
18 setting precedent and excluding the many functions that we
19 allow ITCs to perform under Appendix I, but instead allows
20 ITCs to make their case before us each time on the functions
21 that we will allow under Appendix I.

22 Finally, I note that in making the first cut on
23 these functions for an ITC within an RTO, we do not make any
24 findings or prejudice in any way the viability of a stand-

1 alone ITC. Because I fully support the stand-alone ITC

1 model if we ever see one or get one. I believe that an ITC
2 certainly can add value as a functioning RTO, and I urge my
3 colleagues to move forward in addressing these issues
4 sometime in the near future.

5 Thank you.

6 COMMISSIONER BROWNELL: I just have a couple of
7 brief comments. One of the things that struck me in reading
8 submissions on the TransLink proposal was what I think is a
9 very solid relationship and a fair degree of flexibility in
10 that relationship between MISO and TransLink which I think
11 bodes well for what I think is a process of evolution.

12 I appreciate one of your comments on Appendix I
13 that the world, it strikes me, has changed so dramatically,
14 and this Commission's view of the world since Appendix I,
15 that I think we need to look at that in view of where we are
16 today, as I think we probably -- and I would encourage
17 TransLink and the MISO to look at the protocols they've
18 established in view of what is coming down in terms of
19 standard market design and how they're going to synchronize
20 certain responsibilities in the market as we now envision
21 it.

22 So I feel not that we have limited their
23 opportunities, but I think we've laid out enormous
24 opportunities for TransLink to succeed. And I have greater

1 confidence in that success because of what appears to be a

1 pretty solid working reasonable relationship between MISO
2 and TransLink. So I feel good about this, and I'm really
3 excited as we move forward with these new business models.
4 And I certainly think that this Commission has expressed
5 time and time again a willingness to reevaluate certain
6 decisions in view of the rapid market changes that we see.
7 So, thanks.

8 COMMISSIONER MASSEY: I think this is a very
9 important order. We start here to make concrete decisions
10 about the appropriate role of the ITC within an RTO. More
11 specifically, what functions may be deleted to the ITC.

12 If we get this right, then I think we can
13 productively harness the profit motive and innovation that
14 it brings to help us realize Order 2000's goal of efficient
15 and reliable grid operation that serves as a platform for
16 seamless competitive markets. If we get it wrong, then we
17 may prolong the balkanized markets and biased decisionmaking
18 that stands in the way of efficiency that market solutions
19 promise.

20 I think today's order gets it right in virtually
21 all respects. The order states that the Commission's belief
22 that for effective RTO operations, regional trading and one-
23 stop shopping, a single transmission provider must have
24 overall authority and ultimate responsibility for

1 transmission service in the region. And the basic decisions

1 made in today's order are largely consistent with that
2 vision.

3 For example, there can be only a single tariff
4 and a single OASIS site for the RTO region. And it must be
5 administered by the Midwest ISO/RTO. There can be only a
6 single congestion management regime to be administered by
7 the RTO. The RTO is ultimately responsible for calculating
8 ATC, is responsible for reliability for the region, manages
9 parallel pathflow.

10 The ITC here, TransLink, is delegated certain
11 functions that are primarily local in nature and allow the
12 ITC to implement its business model. For example, the ITC
13 can file rate design and revenue requirement proposals with
14 the Commission. It can maintain a separate rate schedule
15 under the RTO tariff, have physical control of its
16 facilities and provide data inputs for ATC calculations.

17 Today's order is largely consistent with what I
18 regard as the proper but important role of an ITC as a
19 component of an RTO. Overall grid and market operation must
20 be performed by an independent regional transmission
21 provider, in other words, the RTO. As our paper on standard
22 market design says, the basis of good grid and market
23 operation is a security constrained, bid-based dispatch.
24 The RTO must do this and its execution of the dispatch must

1 not be compromised by sharing that function with subregional

1 entities or entities that have assets in the game.

2 The ITC's important and potentially profitable
3 role within the RTO is to maximize transfer capability over
4 its transmission facilities and help alleviate congestion.

5 The ITC can do this by adding capacity, by improving
6 maintenance practices and possibly adding devices that
7 improve operation. By increasing transfer capability, the
8 ITC can gain valuable tradable transmission rights to the
9 grid that it can use or sell in hedging services and earn a
10 profit. The ITC could also receive performance-based rates
11 for lowering grid costs.

12 As with generation and load, the ITC provides
13 another resource to the RTO for reliable and efficient grid
14 operation.

15 There are two aspects of today's order that I
16 would like to raise and express, I wouldn't call it concern,
17 but at least I want to point them out and to indicate that I
18 will be watching how these issues evolve over time. One of
19 them is allowing the TransLink ITC to control or schedule
20 transmission service where the source and sink is within its
21 footprint. As long as there is adequate coordination with
22 MISO to ensure that MISO can monitor the impacts of the
23 transactions scheduled by TransLink.

24 Now in the current operational environment out

1 there, that might work. But under a standard market design

1 regime, I don't see how that does work, and I raise that
2 concern here. I don't understand within a standard market
3 design regime which we're moving to how the scheduling
4 functions can be shared within a region. I am concerned
5 that such a sharing isn't consistent with standard market
6 design.

7 My understanding is that the fundamental element,
8 this is the core of it, of the standard market design
9 proposal, is a security constrained, bid-based dispatch
10 performed on a regional basis. This would undoubtedly be
11 run by a sophisticated computer program that necessarily
12 looks over the entire grid in the region to decide what
13 dispatch is optimal and then to adjust it every five
14 minutes. This dispatch is the basis for determining the
15 locational marginal prices that are the heart of the
16 standard market design.

17 I am trying to come to grips with how more than
18 one entity within a region can accomplish this. I take note
19 of PJM's comments on this matter. They say that the
20 functional operation of the grid must be the responsibility
21 of the entity that is running the locational marginal
22 pricing-based markets and that those functions cannot be
23 separated out, or there will be chaos. Frankly, this makes
24 a lot of sense to me.

1

So I take some comfort in the likelihood that the

1 scheduling coordination between MISO and TransLink will be
2 temporary as we move to day two congestion and standard
3 market design implementation. Today's order notes that as
4 we move towards those events, some of the decisions on
5 operational control may have to be modified to support
6 MISO's implementation of locational marginal pricing and
7 standard market design.

8 The order also states clearly the Commission's
9 belief that a security constrained economic dispatch needed
10 for efficient and reliable market operation is best operated
11 by an independent regional transmission provider. So I
12 raise that point, and I will be watching how this issue
13 evolves.

14 I also want to raise a point on the issue of
15 planning. The order allows the ITC to operate its own
16 planning process as long as MISO has the final word on the
17 plan as it affects facilities outside of the ITC footprint.
18 My own view is that for the MISO region, MISO should
19 ultimately have the final word on all aspects of the
20 planning process and take input from the ITCs from all
21 stakeholders.

22 I would prefer that an asset-neutral entity, an
23 entity that does not own either demand resources, that does
24 not own generation, that does not own transmission, that

1 does not have skin in the game, so to speak, that might buy

1 us the decisionmaking process. I would prefer that an
2 asset-neutral entity run the planning process. But I am
3 comforted by the fact that the MISO RTO will have the final
4 word on planning, at least as it relates to the seams within
5 the RTO between the ITCs and the other areas, and I will be
6 watching this issue as well.

7 I'm not entirely confident that we have made what
8 will ultimately be the right call on planning. I think
9 that's an important function, and I raise that issue here.

10 But today's order is a giant step in the right direction.
11 It gets it right I think in virtually all respects. I raise
12 only these two points of concern. The order has my full and
13 wholehearted support.

14 CHAIRMAN WOOD: I'll just add for this case and
15 the next with the principles that have guided me on the
16 slice-and-dice issues that we have really grappled with
17 since we had a public discussion of them in October of last
18 year.

19 First of course is independence. We welcome
20 independence in transmission however we can get it. This
21 certainly was an adequate way. I think we did have a few
22 issues on the TransLink board selection and rotation process
23 but by and large found that to be a sufficiently independent
24 entity, and proved that I think independence just builds

1 trust from the market, and that's what we have to have to

1 kind of make wholesale markets work. Basically, we have to
2 have the trust.

3 Second, what do they do for infrastructure? Will
4 this be the kind of entity that can adequately build and
5 respond to transmission needs that we know are out there
6 that will assist the implementation of E-1 that we just did
7 on new generators to interconnect, that will actually have
8 an incentive to work with the marketplace as opposed to be
9 just kind of passive and indifferent and not really
10 facilitate some of the needed improvements we need in
11 infrastructure.

12 I think the business plan laid out here that
13 brings in not only some large investor-owned utilities but
14 some very significant public power assets is really a
15 template for I think success in other parts of the country,
16 and I applaud the TransLink applicants for that. I think
17 that from our visits with investors, certainly they find
18 what we've already done, which are much more modest
19 approaches in TransElect and in ITC, I guess that would be
20 capital ITC, were attractive vehicles. Certainly smaller in
21 the dollars and scope than what's being contemplated here.
22 But I think clearly if those are attractive, this would be
23 that much more so.

24 So, Linda, I don't fear the impact on investor

1 attitudes as to where we're going. This order and the next

1 one really do send a good signal, and like you, I'm open to
2 hearing back from people as to what we really need. Because
3 I do think that from my notes on the 19th of February what
4 these folks asked for, where they got kind of clipped back
5 both here and the next order were in areas that didn't seem
6 to me to be that central to the business plan. Anyway, if
7 I'm wrong on that, I will listen and be open.

8 But I do think that the delegation of functions
9 from the umbrella MISO to the individual ITCs in this order
10 were good. This order also in TransLink points out that
11 we're open to innovative rates and other innovations from
12 ITC. What we did here, as we did with TransElect recently
13 -- I'm not sure what we did on ITC -- we definitely sent a
14 signal that the ratemaking is in a new era as well.

15 The third thing that I looked for out of my four
16 principles in these couple orders was efficient grid option.
17 And to use the NERC lexicon when they split up the control
18 area, what we do here is allow the ITC to be the
19 transmission operator, not to be confused with the
20 transmission service provider, which is that one-stop shop
21 operator, but the transmission operator is the person who
22 actively manages the grid assets to maximize throughput, to
23 reduce congestion, to maintain the robust performance of a
24 critical system.

1

The fourth principle I looked at was the one-stop

shop for transmission service. I really felt this was the
core of Order 2000. The principle that customers should
have access to a one-stop shop over an area of sufficient
geographic scope and appropriate configuration to avoid the
numerous seams that pop up and inconsistency between
postings of ATC between and among the different parts of the
region and that is big enough to effectively internalize
that hateful loop flow problem that we have learned to love.

1 This is what the transmission service provider,
2 in this case, an ISO, would do. Unfortunately, sometimes
3 the one-stop shopping principle here collided with the
4 specific items that the ITC applicants proposed.

5 As we move forward, Bill, as you point out,
6 towards thinner market design, we need to be very clear
7 about which entity provides transmission service and
8 operates the market, and which entity operates the
9 transmission grid, and make it real clear there's an
10 important role for each, a good business plan on one side,
11 but an important market protection function on the other
12 side.

13 I do think, particularly on that issue you raised
14 last, if there's a conflict between Trans Link's scheduling
15 between the source and sink in its area, and MISO's
16 scheduling between the source and a sink in the Trans Link
17 area, how that should be resolved. I do think that has to
18 be resolved by one person, not by a committee, and I think
19 this Order makes it clear, who is in charge there, I think,
20 on day one.

21 However, as MISO, large as it is, is getting up
22 and operational on both the operational control sharing and
23 on the planning issues, they're going to need to delegate
24 some of that out when we get to day two in MISO. I think it

1 will look different on operational control.

1 I do, like you, Bill, kind of expect to be
2 following that through as we go through this. I agree,
3 Linda, that I think what we have not done here is say
4 anything anything negative on transcos. I think, in fact,
5 that I would like to say that whoever is the transmission
6 provider, in whatever business model they have, let's be of
7 sufficient scope and configuration to eliminate all the
8 problems that we've seen in the smaller areas.

9 As long as they do that, I'm pretty open to the
10 type of structure that it has on the top. I'm not as
11 concerned on the planning side, Bill, that a transmission
12 owner has such incentivized hands that it would be the wrong
13 thing.

14 I just think transmission is so hard, enough to
15 build on its own merits, that even if there were somebody's
16 hands tipping the scales, it still wouldn't make a
17 difference. You've got to build transmission that really
18 wants to be built, and a lot of probably good transmission
19 won't get built anyway.

20 So I don't mind that transmission might have a
21 little bit more vocal cheerleader in the planning stage than
22 some of the other alternatives, because I think there are
23 plenty of people out there pushing for generation. I don't
24 think there are enough people out there pushing for a

1 rational demand response, but I think we approved an Order

1 today -- let me make sure we did; yes, we did -- that
2 certainly moves PJM in an area where some demand response is
3 being incentivized.

4 That, to me, is not a real high-level worry for
5 me today, so I thought Trans Link put forward a good deal.
6 I was pleased that when before they filed that application,
7 they came in here and really delivered pretty much on what
8 they promised they wanted to do.

9 I think we more than met them halfway, and I
10 think that pulling back where it was necessary to ensure
11 that the one-stop shopping concept that Order 2000 laid out
12 as a goal for this Commission was really adhered to. So I
13 congratulate the applicants on their successful application,
14 and thank the team here.

15 I know the team on the back bench here has done a
16 lot with these Orders over the past several weeks, and I
17 appreciate that they were able to move forward on this
18 important part of the agenda, so thank you all.

19 COMMISSIONER BREATHITT: Aye.

20 COMMISSIONER BROWNELL: Aye.

21 COMMISSIONER MASSEY: Aye.

22 CHAIRMAN WOOD: Aye.

23 SECRETARY SALAS: The next item on the agenda, as
24 has been previously noted, is E-5, Alliance Companies and

1 Others, with a presentation by Melissa Lord, Gilda

1 Rodriguez, Michael Donnini, Patrick Clearey, and Michael
2 McLaughlin.

3 MS. LORD: Good afternoon. I'm Melissa Lord.
4 With me at the table are Gilda Rodriguez, Patrick Clearey,
5 Michael Donnini, and Michael McLaughlin.

6 My presentation involves E-5, and Order on
7 Alliance Companies and National Grid's joint petition for
8 Declaratory Order requesting that the Commission find that
9 certain proposed policy resolutions an appropriate basis for
10 the participation of Alliance Gridco in the Midwest ISO.

11 Under today's Order, National Grid will have the
12 opportunity to profitably own and manage its independent
13 transmission business and to draw on its significant
14 experience and expertise toward the efficient utilization
15 and expansion of the nation's transmission infrastructure.

16 Specifically, today's Order provides guidance in
17 five areas requested by Petitioners: First, consistent with
18 today's Order in Trans Link, this Order details areas and
19 certain functions that may be delegated by the Midwest ISO
20 to Alliance Gridco.

21 Secondly, this Order provides guidance so that
22 the Midwest ISO, in consultation with Alliance Gridco, may
23 determine the maximum use of Alliance Gridco's systems that
24 were developed in good faith.

1

Further, the Order finds that Petitioners have

1 raised valid concerns regarding potential cost shifts due to
2 the Midwest ISO's existing rate design and revenue
3 distribution methodology.

4 The Order also finds that Petitioners' proposed
5 transitional rate methodology for a short transitional
6 period ending December 31, 2004, provides a reasonable basis
7 for addressing these concerns.

8 Fourth, the Order denies Petitioners' requests
9 that Alliance Gridco pay only for Midwest ISO's incremental
10 cost of providing RTO service to Alliance Gridco. However,
11 the order notes that Midwest ISO's proposal to unbundle its
12 administrative cost data to accommodate Appendix I entities
13 is at issue in an ongoing proceeding, and, therefore, makes
14 the issue of Alliance Gridco's payment of the Midwest ISO's
15 administrative cost adder subject to the outcome of that
16 proceeding.

17 The Order also requires the Midwest ISO to
18 evaluate the Schedule 10 adder applicable to Alliance
19 Gridco, to ensure the appropriate recognition of the cost of
20 any such systems contributed by Alliance Gridco.

21 Fifth, the Order finds that pending further
22 negotiations between the parties, the Midwest ISO's offer on
23 equity considerations to refund the \$60 million under the
24 Illinois Power settlement, provided that Illinois Companies

1 pay their fair share of the Midwest ISO's startup costs, is

1 reasonable.

2 Finally, based on the guidance provided, the
3 draft Order directs Petitioners to file a compliance filing
4 within 30 days from the date of this Order, detailing which
5 RTO Petitioners plan to join, and whether such participation
6 will be on a collective or an individual basis. This
7 concludes my presentation, thank you.

8 COMMISSIONER BREATHITT: I will be issuing a
9 concurrence today, along with my affirmative vote on this
10 Order. The reason I am voting for this Order today is
11 because we have ruled on Alliance's request for a
12 Declaratory Order, and that will allow the Alliance
13 Companies to finish making their plans.

14 The reason I am concurring is much like the Trans
15 Link Order. I am uneasy about whether the calls we make
16 will allow ITCs such as the one the Alliance Companies wish
17 to form to become viable and vibrant business models.

18 We ordered the Alliance Companies to file a
19 compliance filing within 30 days of the date of this order,
20 detailing which RTO the Alliance Companies plan to join,
21 either collectively or individually, and I hope that the 30
22 days is enough.

23 In addition to requiring the Alliance Companies
24 to apprise us of their intentions for joining a specific RTO

1 or RTOs, we direct the MISO, in consultation with Alliance

1 Gridco, to file within 60 days, which systems of the
2 Alliance Gridco can be used.

3 There are functions that we make calls on with
4 respect to requests that the Alliance Companies made in
5 their declaratory order, requesting us to do that. A few of
6 them, I think, will be very beneficial to the Alliance
7 Companies in going forward with their plans to form an ITC.
8 Some may not.

9 So, again, I don't want to cast negativity, but I
10 am casting some caution and concern, and, again, the
11 comments that I made in the Trans Link Order apply to this
12 one, as well, and I will be the first to dance a jig if I am
13 wrong. I hope I am.

14 COMMISSIONER BROWNELL: I hope today's Order
15 provides the clarity that the participants have asked for,
16 so that, in fact, they can move on make business plans.
17 This has been a long, difficult, arduous process for
18 everyone, and I think has created some uncertainty that I
19 hope is dispelled by the decisions made today.

20 I think that the Order goes a long way towards
21 addressing the mutual concerns of the parties and some very
22 specific concerns, and, I think, contributions that Alliance
23 made in their recommendations, particularly in terms of the
24 transitional rate proposal.

1

We can't work magic. We can provide leadership

1 and clarity, and I hope the participants themselves can make
2 the magic happen, because I think those individual companies
3 are well poised to make some decisions that, whichever way
4 they go, are good for the larger markets, and those
5 decisions need to be done on the systems issue. I just hope
6 that we all take a very careful look at how the decisions
7 get made.

8 I suspect that there are other uses that can be
9 made to these systems, should people pursue different
10 business models. I don't want to be quick to say these
11 investments are now worth nothing in this new market.

12 I think we need to be disciplined about how we
13 look at those systems and those system costs. I'm going to
14 be urging Staff to be very actively involved in that
15 process, but, by and large, I think this creates some
16 certainty, creates some clarity, gives people what I believe
17 they need to make their business decisions. But I think the
18 business decisions need to get made.

19 COMMISSIONER MASSEY: Virtually all of my
20 comments with respect to the Trans Link Order are applicable
21 here, as well, so I won't repeat them. Let me just say, as
22 one who has participated very actively in this whole slice-
23 and-dice debate, that if you take the Trans Link Order and
24 this Alliance Order, I think what you get is the most up-to-

1 date decisionmaking by the Commission with respect to how we

1 would allocate functions within an RTO, between the RTO and
2 the ITCs that are functioning within the RTO, so there is a
3 lot of information, scores of policy calls in these orders.

4 It's not that the slice-and-dice debate is over,
5 but in terms of allocating functions, this is the position
6 of the Commission at this time, and it's laid out in great
7 detail in these two Orders. So I wanted to make that point
8 and commend it to everyone in the marketplace that has an
9 interest in this question of how an ITC will function, what
10 functions will it have within the context of a larger RTO.

11 This Order has my support as well.

12 CHAIRMAN WOOD: And mine. I think that on the
13 slice-and-dice issues, I don't have much new to add than I
14 said before. Certainly we worked on these Orders together.

15 On the rate issues, though, I think it's a very
16 interesting part of the order that I would encourage not
17 just people in the Midwest to read. Certainly Alliance
18 pretty much gets what they advocate with regard to that, but
19 the Order has a lot more to say about this for any other
20 region, and I think the very meaty discussion there about
21 equities of regional rate design are kind of new ground for
22 this Commission, and, I think that in the context of a
23 Declaratory Order, are refreshingly decisive.

24 So I do appreciate the mindset change that we are

1 going through on these cost issues, because at the end of

1 the day, I've always found that we can talk about technical
2 and operational things till the cows come home, but
3 decisions really get made when you talk about money, and the
4 money issues are keyed up here.

5 I recognize that the incremental versus
6 unbundling issue, I think got resolved well. That issue,
7 taken together with the \$60 million refund to the exiting
8 parties from Illinois, certainly seems to me to indicate
9 that you certainly pay once for everything, but you don't
10 pay twice, but you can't get by paying nothing, either.

11 It works out pretty well, certainly contingent on
12 a future proceeding, but I have already gone public saying
13 that I'm in favor of unbundling rates. If we are unbundling
14 utilities' rates, we should unbundle ITOs and RTOs rates,
15 too, because it ought to be good for everyone.

16 This, to me, is a critical Order. I'm glad and I
17 appreciate that the Staff got a Declaratory Order of this
18 import turned around and before us in 40 days or so, and I
19 think that's a very good signal that we value very much
20 what's going on in the Midwest, and we want closure there.

21 And I think this document is very crisp,
22 particularly where it needs to be. I liked it, so I'm all
23 for it.

24 COMMISSIONER BROWNELL: I just want to add one

1 thing. I want to thank the Midwest Commissioner who have

1 been really active participants and have provided
2 extraordinary leadership in resolving some of the issues, so
3 we don't find ourselves, as we sometimes do, in a different
4 place than our colleagues in the states.

5 So I just want to give them an 'at a boy, because
6 they have certainly worked hard to make this region a model
7 that I think we can all look to.

8 COMMISSIONER BREATHITT: Aye, with concurrence.

9 COMMISSIONER BROWNELL: Aye.

10 COMMISSIONER MASSEY: Aye.

11 CHAIRMAN WOOD: Aye.

12 SECRETARY SALAS: The next item for discussion
13 this morning is No. E-36, Public Utilities Commission of the
14 State of California and Others, with a presentation by Olga
15 Kolotushkina.

16 MS. KOLOTUSHKINA: Good afternoon, Mr. Chairman
17 and Commissioners. The E-36 draft Order addresses
18 complaints filed by the Public Utility Commission of the
19 State of California and the California Electricity Oversight
20 Board against a group of sellers of energy under long-term
21 contracts with the California Department of Water Resources.

22 22

23 These complaints allege that the prices, terms,
24 and conditions of such contracts are unjust and

1 unreasonable, and that the Respondents obtained the prices,

1 terms and conditions in the contracts through the exercise
2 of market power. The Complainant seeks the extraordinary
3 remedy of contract modification.

4 To assure that the Complainants have a full and
5 fair opportunity to present their cases, and that the
6 Commission, in turn, has a complete record on which to base
7 its decision, the draft Order sets the complaints for an
8 evidentiary hearing on contracts executed before June 20,
9 2001. The Complainants will bear the burden of proving that
10 the contract modification is justified.

11 The draft Order also notes that this burden is a
12 heavy one; that the burden of proof for some of the
13 contracts is the contrary-to-the-public-interest standard,
14 and that the evidence contained in the complaints alone does
15 not carry the applicable burden.

16 Furthermore, to aid the parties in settling their
17 disputes without the burden and expense of litigation, the
18 Order holds the hearing in abeyance, pending the outcome of
19 settlement judge procedures. This concludes my
20 presentation, thank you.

21

22

23

24

1 COMMISSIONER BREATHITT: I just have a very short
2 comment to make. I was very pleased to hear about the
3 successful renegotiation between the State of California and
4 five sellers of long-term contracts that was made known to
5 us through the newspapers in California and various trade
6 press articles the last two days. I think that is a good
7 sign of hopefully more to come. The marketplace desperately
8 needs certainty and a long and protracted hearing will not
9 give us that any time soon. So it is my sincere hope that
10 parties will come to the table and renegotiate these
11 contracts as the draft order provides for under the
12 settlement judge procedures. This order wasn't easy for me
13 nor was the one two weeks ago with Nevada Power. But we are
14 making some decisions and moving down the road with respect
15 to these issues which are very serious and I do hope that
16 other parties are able to successfully renegotiate either in
17 California before proceedings start here, or through the
18 settlement judge procedures which this order envisions.
19 Thank you.

20 COMMISSIONER BROWNELL: I'll be supporting this
21 order as I did in the Nevada order with concurrence on the
22 MobileSierra standard, which I believe applies, and I'm glad
23 to see at least applies in some of these contracts. I add
24 to Linda's comment that I hope that the parties can come to

1 some settlement before this has to go to hearing. We had

1 several weeks ago, maybe a month ago, a presentation on
2 infrastructure investment in California which we saw has
3 come almost to a standstill. The feedback we get from those
4 who would provide the financing for further infrastructure
5 additions is that with the kind of uncertainty on these
6 issues and a number of issues within the State of California
7 itself, that that financing is not going to be readily
8 available.

9 There's a huge cost to that lack of
10 infrastructure financing and I don't want to find ourselves
11 in the same situation again. I just say once again I have a
12 strong sense of urgency as I have a strong sense of
13 commitment to a very high burden of proof that would cause
14 us to abrogate a contract. I think we take that very
15 seriously and we need to say that again and again.

16 COMMISSIONER MASSEY: I agree with setting these
17 contracts for hearing. I think the Commission needs to give
18 them a good hard look. I agree with much of this order. In
19 most respects this order follows the language of the order
20 that we voted out on the last agenda dealing with the so-
21 called Nevada contracts. So those of you who read this
22 order will see virtually the same language in many, many
23 respects here as well. So I agree with much of this order.
24 We're doing the right thing in setting these contracts for

1 hearing.

1 I disagree with the order's conclusion that the
2 complainants have not shown that the dysfunctional spot
3 market had an adverse effect on the long term contract
4 market. I think they have shown that fairly persuasively.
5 It seems obvious to me that the soaring prices in the spot
6 market had a rather dramatic effect on both the negotiations
7 and the contracts that were ultimately negotiated. Why
8 would someone agree to \$250 an hour power unless they were
9 dealing with a spot market in which the price was \$250,
10 \$270, \$430 per hour? Yes, they bear a heavy burden. That
11 is our case law and we respect that here.

12 But the Federal Power Act says that any contract
13 that is not just and reasonable is flatly unlawful. We
14 simply aren't doing our jobs and aren't carrying out our
15 Federal Power Act responsibilities if we rubber stamp
16 contracts just because they are long-term contracts. That's
17 not what the Act says. Any uncertainty in the market
18 arising from the fact that we are looking at these contracts
19 is created by the terms of the Federal Power Act itself, so
20 there's a lot in this order that I like. There are some
21 provisions, there's some language that I would not have
22 included and that I disagree with. And there is a
23 conclusion in this order that I must dissent from because I
24 think it is wrong. The order concludes that the California

1 Public Utilities Commission, which is not a party to any of

1 these contracts, is bound by the MobileSierra language of
2 the contracts.

3 In other words, the California Public Utility
4 Commission is bound to a higher burden of proof, the public
5 interest standard rather than the just and reasonable
6 standard of the contracts. The argument seems to be that, I
7 guess, the entire California State Government somehow
8 functions as a monolith making joint decisions on these
9 issues. Thus a clause in the contract signed by the
10 Department of Water Resources somehow binds the California
11 Public Utilities Commission. Such a conclusion is
12 unprecedented in my judgment. The California PUC points out
13 that it did not participate in the negotiations leading to
14 the signing of these contracts. It's an independent
15 regulatory body responsible for regulating utilities and is
16 charged with protecting consumers. It is, in some ways,
17 similar to the FERC. This Commission would bristle at the
18 idea that some executive branch official or the Department
19 of the Interior or the Department of Energy or you name the
20 other agency, could somehow bind us in some way that is
21 inconsistent with our statutory responsibility. I think
22 that would be unprecedented and wrong.

23 Are hundreds of other California State entities
24 and agencies also bound? Is any creature or institution of

1 the California State Government bound by clauses in the DWR

1 contract even if they had nothing to do with their
2 negotiations? I think not. We don't cite any precedent for
3 this conclusion that the California PUC is bound and I don't
4 think any such precedent exists. In fact our precedents, in
5 my view, lead in the opposite direction. They generally
6 support the position that a signatory to a contract cannot
7 bind non-parties to a certain standard of review. So I
8 respectfully dissent on this point, Mr. Chairman, and will
9 be writing separately.

10 CHAIRMAN WOOD: Thank you, Bill. I think to
11 follow up on the point you made a moment ago, I know that
12 there are some out there who are concerned about our
13 referral of this and of all the cases to hearing. I think,
14 as this order and that one have laid out though, the law
15 compels it, and I think this is the opportunity that parties
16 can first of all use to negotiate. Fortunately some already
17 have. I notice that our most current draft of this order
18 has deleted five contracts from Appendix A that make this
19 order a little bit lighter, but I think it's the case it's
20 time to make the case on both sides why this shouldn't
21 happen. Get it out there, air it in public, then put this
22 issue to bed. There either is something wrong or there
23 wasn't something wrong. Let's just get it over with because
24 it's not benefitting anybody, and I think the amount of time

1 it takes to put on a sufficient case is relatively short

1 compared to the amount of time it would take to get rid of
2 venom that just stays in the system and is never eliminated.

3 If these are not settled, we will ultimately come
4 up with decisions not with very much clarity, not in 1935
5 when the Act was written but 2001, 2002, 2003, when the new
6 world is coming into full impact, what the Federal Power Act
7 means. If we don't have a hundred percent settlements here,
8 we will be able to articulate very clearly and provide a
9 tremendous amount of certainty for long-term contracting and
10 how that interplays with the Federal Power Act. So I think
11 either way at the end of this relatively short progression
12 on the California, Nevada, and I think other states as well,
13 cases that there will be a lot of certainty in this market.

14 I know some people wish it wouldn't have been uncertain in
15 the first place. But the place to fix that is down the
16 street when you write the Federal Power Act over, not here.

17 As to the issue you raise, Bill, I do understand
18 what you're saying. I think though that the standing in
19 shoes, the state, much like any corporate parent, has
20 affiliates and I think if it were always able to in fact
21 take a MobileSierra standard that was negotiated between one
22 branch of the state and a seller and then allow basically
23 another branch of state government to come around that and
24 circumvent that I think that would really crater the

1 opportunity for anybody to have faith that a deal with the

1 state is going to stick. I do know there's already enough
2 concern about that today with what's going on out there
3 today that I don't want to add that by saying that we
4 basically countenance a bypass of what two parties have
5 agreed to. The party that had the imprimatur of the state
6 to be negotiating on behalf of its customers in the first
7 place, so if the state wants to change the way that BWR
8 works and what it can agree to I think it's for them to deal
9 with. But I don't want to create basically an end run
10 around an affiliate.

11 It is new, I agree, because we haven't been faced
12 with that issue, but I would say if the federal government
13 wanted to do that to us, then if they gave the Department of
14 Defense the right to do something, that more specific, we
15 might be precluded from that. I'm not sure that it's our
16 job to question what legislative enactment allows for so I'm
17 comfortable with the call here. Some have argued that in
18 this order, we shouldn't have allowed the state agencies to
19 have any standing to file these complaints in the first
20 place. I don't think that's fair. I think they do under
21 years and years and years of FCC and FERC precedent have a
22 right to file these complaints here but I do think that it
23 is appropriate to discuss, as we have tried to do here a
24 little bit better than we did in the Nevada order, what the

1 standard of review ought to be. I think this is timely and

1 I appreciate that. We aren't quite all there on it, but I
2 do think it's important to get these out to hearing and more
3 importantly to a settlement forum where more of the same
4 that happened on Monday can happen again, so let's get
5 there.

6 COMMISSIONER BREATHITT: Aye.

7 COMMISSIONER BROWNELL: Aye with concurring
8 statement.

9 COMMISSIONER MASSEY: No in part.

10 CHAIRMAN WOOD: Aye.

11 SECRETARY SALAS: The next item on the discussion
12 agenda is H-4. This is a report on delegated actions by the
13 Commission's Office of Energy Projects. We have a
14 presentation by Bill Zollar and Barbara Christin.

15 MR. ZOLAR: Good afternoon, Chairman Wood,
16 Commissioners. My name is Bill Zolar with the Office of
17 Energy Projects. To my right is Barbara Christin from the
18 Office of General Counsel.

19 (Slide.)

20 We thought it would be of interest to present you
21 a brief snapshot of the many on-going OEP actions which are
22 really in addition to the more controversial actions that
23 come before the Commission. These actions are not always
24 highly visible. They're not always of large magnitude.

1 However, they are very significant to the applicants and the

1 parties involved. And they represent an important nuts and
2 bolts element of the Commission's work to maintain and
3 advance the nation's energy infrastructure. This briefing
4 this afternoon summarizes the OEP actions for the period
5 just since January 1st of this year. Next slide, please.

6 (Slide.)

7 As you can see, there were over 800 OEP actions
8 during this period. Of the over 800 actions, a number are
9 particularly noteworthy. In the hydro power area there were
10 seven new licenses issued and four major amendments to
11 licenses. There were also 22 preliminary permits to study
12 site feasibility for hydro power projects.

13 For gas, there were two authorizations for
14 construction. It says abandonment too in this case. They
15 were juts for construction under blanket certificate
16 authorizations and there were also six case-specific gas
17 pipeline certificates issued during the period. Next slide,
18 please.

19 (Slide.)

20 It doesn't show up very well but just so you
21 don't strain your eyes, basically this shows the location of
22 the noteworthy actions with the exception of the preliminary
23 permits. The blue dots represent hydro power projects. The
24 red dots represent natural gas projects. Basically what

1 that map shows is that both the hydro power and the gas

1 projects are pretty evenly distributed throughout the United
2 States. Three of the seven hydro licenses, for instance,
3 are located in Michigan while the other four are in
4 Wisconsin, New Hampshire, North Carolina, and South
5 Carolina.

6 Two of the four hydro power amendments are in
7 California and the other two are fairly widely spread in
8 Idaho and New York.

9 As to gas, the six projects authorized under case
10 specific certificates again are widely distributed. They
11 are located in Texas, Arizona, California, Nevada and
12 Pennsylvania. The two projects authorized under blanket
13 certificates are in Illinois and Maryland. The map doesn't
14 show the location of the preliminary permits hydro permits
15 which are really permits to study the feasibility of hydro
16 power projects, rather than adding to or maintaining
17 existing generation. However, most of those preliminary
18 permits that were issued are located in the west. Next
19 slide, please.

20 (Slide.)

21 So what was authorized in these actions and what
22 was achieved? The seven hydro power licenses maintain 298
23 megawatts of existing capacity, restored flows to over
24 three-and-a-half miles of dewatered river, enhanced over 75

1 miles of river including two scenic waterfalls and protected

1 over 4,000 acres of wildlife habitat. The four hydro power
2 license amendments approved .7 megawatts of additional
3 capacity, provided rip rap, sluice boxes and other sediment
4 control measures to reduce annual sediment removal cost,
5 removed a portion of the transmission lines no longer
6 considered primary from the license, and restored natural
7 tributary flows by removing a diversion structure. Next
8 slide, please.

9 (Slide.)

10 The 22 preliminary permit orders approved
11 feasibility studies for 465 megawatts of potential new hydro
12 power capacity. The second bullet there collectively the
13 gas certificates approved about 4.3 miles of new pipeline,
14 added 218 Mmcf per day of capacity for Western State. It
15 says customers, it's really one customer, added six new
16 compressor units totaling 25,600 horsepower and a power
17 plant lateral. The blanket certificate actions approved
18 1200 Mmcf of additional storage capacity and two new
19 delivery points. What will the new gas facilities do in
20 practical terms? One pipeline segment will permit gas
21 deliveries to a new 1200 megawatt power plant in the rapidly
22 growing Las Vegas, Nevada area. The three compression
23 projects will permit two pipeline companies to comply with
24 Clean Air Act requirements and the other company to replace

1 a deteriorating pipeline segment.

1 The new delivery points will provide for more
2 flexible gas delivery opportunities into the Southern
3 California market as well as an alternative source of gas
4 for an existing Baltimore area manufacturing plant.
5 Finally, the authorization of new storage capacity will
6 provide enhanced and more reliable storage to existing
7 pipeline customers of a natural gas pipeline in the Midwest.

8 Together, the gas and hydro actions help sustain
9 and support an adequate energy infrastructure, and they
10 represent the behind-the-scenes, day-to-day activities which
11 are ongoing and are very important to our overall mission.

12 This concludes my presentation. Thank you.

13 CHAIRMAN WOOD: Thank you, Bob and Barbara. I
14 wanted us to just periodically do this, because there are a
15 lot of things particularly in OEP that go through under
16 blanket or delegated authority, and I think it's important
17 for us to put some public spotlight on those. I appreciate
18 the effort and don't have any questions.

19 COMMISSIONER MASSEY: I remember when I first
20 came to the Commission looking at a number of orders that
21 were on the agenda for the full Commission, 100 or 150 every
22 two weeks, and thinking, well, that's a couple of thousand
23 orders a year or perhaps more. But I was told that the
24 Commission, through the full Commission and Staff actually

1 issues 15 to 20 thousand orders a year. Is that roughly

1 right, do you know?

2 CHAIRMAN WOOD: Last week -- I know you had how
3 many issuances? Let me ask Magalie. It's one of her new
4 duties here to find out how much of that goes on. What
5 number of issuances from the Commission last week?

6 SECRETARY SALAS: Last week it was like around
7 400 something for one week.

8 CHAIRMAN WOOD: So times 50 weeks, that would be
9 --

10 COMMISSIONER MASSEY: Twenty thousand.

11 MR. ROBINSON: We do about 3,000 actions out of
12 OEP a year, to give you some feel for what comes out of our
13 office.

14 COMMISSIONER MASSEY: I'm glad to have this
15 presentation, because I think it highlights all the behind-
16 the-scenes work that is actually carried out by our great
17 Staff, and it's literally the bulk of the work that the
18 Commission does it seems to me is done. Certainly the
19 overwhelming majority of the orders the Commission issues
20 are carried out at the Staff level by delegation.

21 So there's a lot of day-to-day judgments, 400
22 last week. That's a remarkable number.

23 MR. ZOLLAR: I think it's a good process because
24 those of us that have been here a while remember back in the

1 late '70s so many of these very routine actions and more

1 major actions had to come to the Commission. I recall
2 Commission meetings being three days sometimes. That's a
3 benefit for you too.

4 (Laughter.)

5 CHAIRMAN WOOD: Say that about every three or
6 four months so I don't get any hazing. Thank you all. Keep
7 up the good work.

8 SECRETARY SALAS: The next item is C-1, Northwest
9 Pipeline Corporation, with a presentation by Lori Tsang,
10 Jack Donaho and John Wisniewski.

11 MS. TSANG: Good afternoon, Chairman Wood and
12 Commissioners. C-1 addresses an application filed by
13 Northwest Pipeline to construct and operate new natural gas
14 lateral pipeline facilities. The facilities consist of two
15 taps on its mainline facilities, 48.9 miles of 20-inch
16 diameter lateral pipeline, a 4,700 horsepower compressor,
17 and a meter station.

18 The new \$75.2 million lateral pipeline will
19 deliver up to 161,500 DTH of natural gas per day to fuel
20 Duke Energy Grays Harbor's new 650 megawatt electric power
21 generating plant that is currently under construction in
22 Grays Harbor County in the state of Washington. The draft
23 order issues a certificate subject to certain conditions
24 designed to protect the environment. It confirms the

1 Commission's preliminary determination that the proposal

1 will provide substantial public benefits with minimal
2 adverse impact.

3 The new Grays Harbor electric generating plant
4 will require test gas this winter and is scheduled to
5 commence commercial operation in July of 2003. Electricity
6 generated by the plant will be sufficient to supply the
7 needs of 600,000 homes and will serve growing markets in the
8 Pacific Northwest and California.

9 CHAIRMAN WOOD: Thank you, Lori. I wanted to
10 call these two up. I just think in general when we're
11 issuing certificates, those are significant items, and I
12 just wanted to have those be just laid out by the Staff who
13 worked on them, just to get some public attention to them.
14 I of course support the order and am glad to see it up here
15 and don't have any further comments on it.

16 All right. Linda, vote?

17 COMMISSIONER BREATHITT: Aye.

18 COMMISSIONER BROWNELL: Aye.

19 COMMISSIONER MASSEY: Aye.

20 CHAIRMAN WOOD: Aye.

21 SECRETARY SALAS: The next item, C-3, Kern River
22 Gas Transmission Company with a presentation by Albert
23 Francese and Randy Mathura.

24 MR. FRANCESE: Mr. Chairman, Commissioners, good

1 afternoon. C-3 addresses an application under Section 7 of

1 the Natural Gas Act filed by Kern River Gas Transmission
2 Company to construct and operate the High Desert Lateral.
3 This 32-mile-long lateral would transport natural gas to a
4 720 megawatt electric power generation plant under
5 construction in the vicinity of Victorville, California.

6 Kern River will transport natural gas to the
7 generator over a 21-year service agreement at negotiated
8 rates. Kern River states that it must start construction in
9 May of this year to meet the generator's requirements. The
10 draft order issues a certificate. Subject to certain
11 environmental conditions and other conditions, the draft
12 order also states that the High Desert Lateral is in the
13 public interest because it will increase the supply of
14 electricity in California with minimal adverse effect.

15 Thank you.

16 CHAIRMAN WOOD: Thank you, Al. Ready to let her
17 go?

18 COMMISSIONER BREATHITT: Aye.

19 COMMISSIONER BROWNELL: Aye.

20 COMMISSIONER MASSEY: Aye.

21 CHAIRMAN WOOD: Aye. I have one administrative
22 item, and that is now, armed with the numbers from our
23 capable Secretary and her staff.

24 SECRETARY SALAS: Next time, Mr. Chairman, I'll

1 ask let's do this one first so that you can send a message.

1 But, Mr. Chairman asked the Office of the Secretary to
2 provide today just a snapshot of last week's electronic
3 filing activities. Just for last week only, and this will
4 address the days of April 15th through April 19th, we had a
5 total of 462 filings, out of which 371 were on paper.

6 Now we are talking here in terms we all know that
7 electronic filing activity has been rolling out into the
8 Commission, and at this point we are allowing electronic
9 filing in basically three categories. We're talking about
10 interventions, comments and protests and pleadings and
11 motions. Interventions, for example, we had 43 filed
12 electronically out of a total of 187. Comments and
13 protests, we had 21 filed electronically out of a total of
14 153. And in the pleadings and motions category, we had 27
15 out of a total of 122.

16 So for last week, we find that if we take a look
17 at these numbers, we have a total rate of 80 percent of the
18 filings that are permissible for which we have provided
19 electronic opportunity, 80 percent of those have come in in
20 paper.

21 Having said that, I will tell you, Mr. Chairman,
22 that yesterday we hit electronic filing number 6,000. So
23 putting those things into perspective, I think that the
24 future holds great promise for the Electronic Filing

1 Initiative. And as we grow into more categories, we should

1 be seeing an increase.

2 CHAIRMAN WOOD: I would just recommend that one
3 of the things we could to accelerate that would be for maybe
4 you to get me a list of the names of the law firms that like
5 to do paper and I'll have Ms. Alison on her crutch to give
6 them a call.

7 (Laughter.)

8 SECRETARY SALAS: We'll try to do that for you.

9 CHAIRMAN WOOD: We love electronic things.
10 Today's meeting was about a number of things, but certainly
11 harnessing new technology to make life easier on all of us
12 and cheaper for the customer is a big message. We got it
13 internally, too.

14 Thank you all very much. And I promise the next
15 one will not only be three weeks away, but it will be much
16 shorter. Meeting adjourned.

17 (Whereupon, at 1:05 p.m. on Wednesday, April 24,
18 2002, the meeting was adjourned.)

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